No. 11962

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

PROCTER & GAMBLE MANUFACTURING CO.,
Appellant,

vs.

H. F. METCALF, Trustee in Bankruptcy of the Estate of F. P. Newport Corporation, Ltd., Bankrupt, DOROTHY DAY, MARTHA McMILLEN, MATILDA OLSEN, WILLIAM H. NEBLETT, MRS. F. P. NEWPORT, EUGENE P. CLARK, E. P. NEWPORT CORPORATION, LTD., RUBY E. NEBLETT, SECURITY-FIRST NATIONAL BANK OF LOS ANGELES and JOSEPH SATTLER,
Appellees.

TRANSCRIPT OF RECORD

(In Two Volumes)

VOLUME II

(Pages 209 to 425, Inclusive)

Upon Appeal From the District Court of the United States for the Southern District of California Central Division

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(Testimony of Roy G. Mead)

between this field which is the Harbor fault, and the next one to the west, the Edison fault, was sealed in and the oil couldn't get out. It was held right there.

Q. By Mr. Nelson: If there was a deeper zone, the point of penetration would be farther from the fault line than in the upper zone?

A. Yes. In my opinion there is another zone called the 237 zone which might be called the lower part of the Ford zone. That zone is also productive in Block Five to the west of this property.

Q. Logs have been brought in in that zone? [140]

A. Yes.

Q. What is the nearest one?

A. The nearest one is a couple of hundred feet away.

Q. You don't mean 200 feet from this property?

A. It would be about three or four hundred feet to the west. There are a number of wells I don't remember the location of but I think we have a map here showing that, with the lower zone wells marked on that.

Mr. Cahill: Let me clear that up.

Q. At a distance as close as three or four hundred feet from the Newport property there are wells producing now from the Ford zone?

A. There are wells producing now from the Ford zone, that is right on the west.

Q. Is that one of the factors that led you to the opinion that the Ford zone underlies this six-acre parcel?

A. Well, in a way, yes. My reason for believing the Ford zone underlies that is purely geological, based on information obtained from various parts of the field and from this electric log that you have just introduced in evidence.

(Testimony of Roy G. Mead)

Q. What is your opinion, Mr. Mehde, as to the possibility of a still lower producing horizon known as the 237 zone underlying these particular lands?

A. In my opinion that zone does underlie this land for the reason that all of your formations are built up just like a layer cake. If you have a zone under one part of the [141] field that same zone will be under the other part of the field unless there has been an intervening fault to cut it off. In this case there has been no intervening fault to cut off the intervening zones. The only thing is that portions of the zones to the east of the various faults, particularly the Harbor fault, are those that contain water and not oil; but the zone could go under all of this property and each of the faults might not be productive.

Q. Is the 237 zone where it has been produced in the area productive of oil?

A. Yes. There are some 20 wells producing from the 237 zone in Block Five.

Q. That is sometimes referred to erroneously as the Schist zone, isn't it?

A. Yes. That is referred to as the Schist zone. The reason it is called the Schist zone is because there is some similarity between the schist-producing zone in the Torrance area and the Wilmington area. There is a formation called the nodular shales which is encountered just above the Schist zone and this 237 zone includes a portion of this nodular shale and some of the underlying schist. The underlying schist is basement rock.

(Testimony of Roy G. Mead)

Q. Does the electric log of Well No. 6 show that the Universal Consolidated Oil Company drilled it to a depth sufficient to penetrate the 237 zone?

A. Yes. In comparing the depth at which the 237 zone [142] was encountered in other areas down there, I am of the opinion that that probably hit the top or upper portion of the 237 zone in the No. 6 well.

Q. But did not penetrate into it?

A. No, I don't believe it penetrated it.

Q. You then conclude of necessity in answer to the last question that they did penetrate the entire Ford zone?

A. Yes, they penetrated the upper and lower Ford zone.

Q. What has been the production on these 20 wells in the 237 zone in barrels per day, approximately?

A. I don't carry that in my head. It is around 160 barrels. There were 20 wells producing from the Ford zone. They are perhaps averaging a daily production of 161 barrels as of January 1, 1947. Some 78 wells producing from the 237 zone have for an average daily production 283 barrels. Of the Ford zone, of the 20 others producing from the Ford zone, 9 were flowing, and of the 78 wells producing from the 237 zone as of January 1, 1947, 75 were flowing.

Q. You mean barrels per well when you state that?

A. Barrels per day per well.

Q. Some of those wells have been producing for quite a number of years, particularly from the Ford zone, is that right?

A. I believe in that particular area the Ford zone was not producing until after the war. I think along about 1945 [143] or 1946 they started to take produc-

(Testimony of Roy G. Mead)

tion from the Ford zone. Prior to that time there was an agreement among the operators to not develop that zone in that particular area.

Q. You want the court to understand, Mr. Meade, it is your position that the Ford zone does underlie this six-acre parcel?

A. Yes, that is definitely my opinion.

Q. Also that there is a possibility that the 237 zone underlies this particular parcel?

A. Yes, the 237 zone undoubtedly underlies the property. Whether or not it is productive is something I would not be able to say until after an electric log was run, but I have no reason to doubt but what it would be productive.

Q. Are you of the opinion from the information you have that the Ford zone is productive there?

A. Yes, I am definitely of the opinion that the Ford zone is productive.

Q. On these lands under the six-acre parcel?

A. The portion to the west of the fault—the fault crosses under this property and there would be a portion of this property in which you could not encounter the Ford zone.

Q. What portion is that, approximately, Mr. Meade?

A. That would be the portion of Parcel No. 2, a part of that. I don't know just what the flow of the fault would be without further study, but if you had to drill slant [144] holes or deepen these holes by continuing on down by slant drilling you would cross another property and be under Parcel No. 1. If arrangements were to be made to get a right of way through that property, then you could produce from the wells drilled on Parcel No. 2.

(Testimony of Roy G. Mead)

Q. Can you produce from the Ford zone here by straight drilling?

A. Well, not from Parcel No. 2. It is on the west portion of the property that you would encounter the Ford zone.

Q. In the westerly portion of the six acres could you produce by straight drilling there?

A. No. I believe that the wells might have to be deflected slightly to the west.

Q. Could that be done without going through anybody else's land?

A. Yes, and could be within the property limits. Wells Nos. 1, 2 and 3 would offer no problem whatever to producing from the Ford zone by continuing on down straight. The other wells might have to be slant wells.

Q. You are of the opinion this Well No. 6, based upon an examination of the electric log, would have been a profitable producing well?

A. From my examination of the log I see no reason. If I were an engineer I would have recommended that the well be completed according to good oil well and oil field practice [145] and would have been a producer.

Q. Do you know whether it is almost universally regarded among oil companies and oil producers that the data on these electric logs, while not regarded as infallible, is regarded as experimentally reliable? Is that correct?

A. Yes. Among operators throughout the world the electric logs are considered reliable data.

Mr. Cahill: Thank you very much, Mr. Meade.

(Testimony of Roy G. Mead)

Cross Examination

By Mr. Lynch:

Q. Did you ever examine the Universal Consolidated Oil Company's production log on this well?

A. You mean their report of production?

Q. Yes. A. No, I haven't.

Q. Are you aware of the fact that a production test was run on the deep well No. 6?

A. No, I don't know that.

Q. You made no inquiry from them as to the results?

A. No, I did not.

Q. You do know, of course, that the Universal Consolidated Oil Company has been in business for a great many years?

A. Yes. They are considered a good operator.

Q. They are considered one of the best operators in the field, are they not? [146]

A. Well, I am not in a position to say whether they are best or not.

Q. I don't mean the best. I don't want you to say whether or not they are the best, but they are considered among the best operators in the field?

A. They have a good engineering staff. They drill some poor wells and they drill some good wells.

Q. You are aware of the fact, of course, that the Universal Consolidated Oil Company is in business for the purpose of making a profit?

A. That is true.

(Testimony of Roy G. Mead)

Q. If they found production in this lower well No. 6, as extended, they would have produced it, isn't that a fair statement?

A. I don't know what the policy of Universal Consolidated or any other operator might be so I wouldn't say.

Q. Your testimony as to whether or not this well could be produced is purely a hypothetical conclusion reached by you as a result of examining the electric log without knowing any of the actual operation experiences or production experiences, is that true?

A. My opinion is based on a knowledge of the geology of the area and what I saw on the electric log.

Q. In other words, the electric log may show oil in a particular area but it doesn't demonstrate in any wise the quantity of that oil, does it, or water, and whether or not [147] it would be economically profitable to develop it?

A. Well, an electric log does not—there isn't any instrument that will tell the quantity, but from experience in looking at an electric log, and from production tests afterwards, you could form some opinion in a particular area of what kind of a well you are going to get from the appearances of the log.

Q. I am assuming, of course, that your testimony here is given in good faith, Mr. Meade. I assume you would be perfectly willing during the noon recess to go over and talk to Mr. Williams or some other engineer about the production on this well. Would you do that?

A. Would I talk to them?

(Testimony of Roy G. Mead)

Q. Yes.

A. Well, I wouldn't have any objection to talking to them.

Q. Would you undertake to do that?

A. Undertake to do what?

Q. Undertake to talk to them. I think you would like to straighten yourself out as to what happened in relation to this well. Now the fact is that there was not production sufficient from that lower zone to make it economically profitable to develop it. Would you care to go over and talk to them about it?

A. I wouldn't have any objection to finding out what the results were. I would be glad to do that. As I stated, [148] I would have recommended, from what I see on the electric log and from my knowledge of the geology of the area, I would have recommended that the casing be run in the well and be perforated on the points indicated on the log as desirable.

Q. I know that, Mr. Meade. And I think undoubtedly you recognize that no engineer, unless he knows what the production results have been and what the production runs show, is going to make any recommendation to an operator as to whether he shall or shall not develop it. Isn't that true?

A. He is called upon to make recommendations to the operator on the basis of the information that he has.

Q. What I want to know, Mr. Meade, is this. Did I understand that you are willing to tell this court that you would make a recommendation to the operator to develop a particular zone without knowing what the production experience or run tests on that well are?

(Testimony of Roy G. Mead)

A. Well, I think we are a little confused there. If I were the engineer for the operator and they drilled in that area and got a log such as the log that we have here, not having any other adverse information, I would recommend it.

Q. You would ask to have a production test, wouldn't you?

A. They make a production test but sometimes a production test isn't conclusive. For instance, if you have—

Q. Oh, well—

A. —sections in the zone that have water in them, [149] such as this one has, a production test might not be conclusive, unless in making the production test they exclude the portions that have water and test only the portions that have oil.

Q. Have you made any geologic survey of this property to determine where the fault is in relation to it?

A. Only such information as is known generally from the wells which is common information.

Q. Have you examined the log on any wells other than No. 6? A. On this property?

Q. Yes.

A. Well, I have looked at all of the electric logs.

Q. On this property?

A. For the wells drilled on this property.

Q. You have looked at those electric logs, all of them?

A. To their present producing depths.

Q. Having examined the electric logs on this property —and I assume you have examined electric logs on what is known as the three-acre parcel—can you tell us now which side of the faults these wells lie on?

A. Which is the three-acre parcel?

(Testimony of Roy G. Mead)

Q. The three-acre parcel is the one adjacent to the Southern Pacific property.

A. As I understand it, this property is divided into [150] two parcels, Parcel No. 1 and Parcel No. 2, with an intervening piece of property between.

Q. That is right.

A. Owned by another person or under other ownership.

Q. That is right. There is a six-acre parcel and a three-acre parcel.

A. The six-acre parcel is parcel No. 2, isn't it?

Q. Well, I don't know—yes. Parcel No. 2 is the six-acre parcel and Parcel No. 1 is the three-acre parcel.

You have examined the electric logs on the wells on Parcels No. 1 and No. 2?

A. That is right.

Q. You made an examination of the electric logs of those wells on those two parcels. On which side of the fault do these wells lie?

A. The collar of the holes are on the east side of the fault.

Q. How about the wells on the No. 1 parcel?

A. Well, all of those wells start on an area that is on the east side of the fault and bottom on the west side of the fault.

Q. In that area there is very little production from the east side of the fault, isn't that true?

A. There is no production—there is production in the upper zone called the Ranger zone on both sides of the fault, and in the Terminal zone there is no production on the [151] east of the fault.

Q. In relation to Well No. 6 where does it bottom? On which side of the fault?

(Testimony of Roy G. Mead)

A. Well, I haven't seen the survey of that well.

Q. You have not seen the survey of the well, nor have you—

A. But it would bottom, in my opinion, on the west side of the fault because it penetrates the Terminal zone on the west side of the fault.

Q. But you have not examined the survey so you don't know where it bottoms?

A. No, I haven't examined the survey.

Q. Would you undertake to do that during the noon recess?

A. Well, I have examined the survey that has been plotted on Mr. Carrey's report.

Q. For your information, Mr. Carrey's report of these wells has been filed in this proceeding. Have you examined that report?

A. Well, I examined a report that Mr. Carrey prepared for Mr. Newport. I don't know enough about this case to know whether—

Q. Do you have that report with you?

A. It is in the court room.

Mr. Lynch: Mr. Cahill, do you have that report?

Mr. Cahill: I have a copy of it here. [152]

The Referee: Is there any provision in this lease which requires the lessee to go down to the Ford zone?

Mr. Cahill: Yes, your Honor. There is a provision, if it is discovered or determined that there are productive zones, and the lessee fails to go down and produce those zones after demand, that the lessor has the option or right to produce those.

(Further discussion omitted and the matter was then continued to 10:00 o'clock a.m., December 1, 1947.) [153]

Los Angeles, California, December 1, 1947, 10:00 A.M.

The Referee: All right, gentlemen, let's proceed.

Mr. Lynch: We have the vice-president from the Universal Consolidated Oil Company here. If the Court has no objection and if counsel is willing we would like to put him on out of order so that he may be relieved and dismissed.

Mr. Cahill: I have no objection, but before he is called I would like to read a part of the lease to Your Honor, the lease being in evidence. I read several paragraphs before and I thought the Court should be acquainted with it as we go along.

The Referee: Very well.

Mr. Cahill: I desire to read from page 4, the paragraph entitled, "Full Development Clause" as follows:

> "Unless excused from so doing under Paragraph 5 hereof (anything herein elsewhere to the contrary notwithstanding) the Lessee agrees, while operating hereunder, to properly produce all available oil, gas and other hydrocarbon substances from the demised premises, (or any portion thereof held by the lessee), and to properly exploit, develop and protect the minerals and mineral rights in the demised premises, (or in any portion thereof held by the lessee), subject in each instance, to [154] legal restrictions and to any regulations imposed by governmental authority or any other matters over which the Lessee has no control. For a failure of the Lessee, when reasonably necessary and proper so to do, develops any known commercially profitable zone or stratum the Lessor may forfeit the right of the Lessee to develop and pro-

duce any such zone or stratum or any zone or stratum below any depth from which the Lessee may then be producing on said premises, or the Lessors may pursue any other remedy given them by law hereunder."

Also, before we proceed, I would like to make this statement in reference to what Mr. Lynch said at the last hearing—not answering Mr. Lynch in any way, but just an observation—we called an expert, Mr. Meade, for the primary purpose to render expert opinion as to whether underlying these lands in question were one or two horizons that have not been produced from, the Ford Zone or the 237 Zone, or both of them. The witness rendered his opinion regarding that point. He was asked by myself or someone else to state his reasons and he stated many reasons. I thought in passing, and only in passing, he made this statement to Mr. Lynch as taken from the viewpoint that does not concern the Objectors here at all, he said if he had been the petroleum engineer on the well he would have recommended production tests on Well No. 6 and be produced. Now, whether Well No. 6 should [155] be produced is no part of the case here. It is simply a statement that the witness made in passing in support of his opinion. As far as we are concerned it is not a point at issue whether Well No. 6 should have been produced heretofore or not. It is not a matter in the case so we might avoid possibly putting too much time on that particular point.

I understand that Mr. Follansbee is here and he might be very helpful in giving his opinion as to wether the Ford Zone or the 237 Zone or both of them have any possibilities.

Mr. Lynch: I am in agreement with Mr. Cahill in one respect: The question of whether or not this particular well should have been put on production on the deeper zone is not involved in this proceeding. However, one question is involved in this proceeding and that is whether or not there is any production to be had from that lower zone. It was the information of the Trustee and it was the information of his counsel that this particular Well No. 6 had been developed and drilled into that zone, and that production from that zone under this property was found to be not commercially profitable. Consequently we have felt that there has been an exploration of that zone and a determination that it is not a profitable venture. The Trustee is not in any wise concerned in an effort to force this sale. If it is the conclusion of this Court that there [156] may be a zone that can be profitably developed then I think, as I stated at the conclusion of the last hearing, that this sale should not be made because I think it should be made clear so that there will be no misunderstanding that if this sale goes through the right to develop any such zones, unless the Universal Consolidated Oil Company does it itself, is lost to this estate. In other words, if the Universal Consolidated Oil Company refuses to develop a zone which they think is unprofitable, or for any other reason, this right to which counsel has referred of forfeiture is lost to the estate; that passes to the purchaser. We would not be able by reason of any such failure on the part of the Universal Consolidated Oil Company to forfeit the lease in that respect and drill any wells or cause them to be drilled.

The Referee: Do you want to put the witness on and hear what he has to say?

Mr. Lynch: Yes, Your Honor.

The Referee: My recollection is they drilled into the Ford Zone and failed to find oil there in profitable quantities.

Mr. Lynch: That is the information that the Trustee and his counsel have had, and Mr. Follansbee can tell us about that.

The Referee: Let's find out from someone who drilled it and who knows something about it. [157]

G. F. FOLLANSBEE, JR.,

called as a witness on behalf of the Trustee, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lynch:

Q. Mr. Follansbee, will you please tell us your full name? A. G. F. Follansbee, Jr.

Q. You are an officer of the Universal Consolidated Oil Company? A. Yes, sir.

Q. What office do you hold?

A. I am vice-president.

Q. Are you also an engineer, Mr. Follansbee?

A. Yes, sir.

Q. What experience have you had as engineer?

A. I was graduated from Stanford University with an A.B. in Geology. I took one year's graduate work in petroleum engineering. I spent 2½ years with the California State Division of Oil and Gas as an engineer. I have been 19 years with the Universal Consolidated Oil Company as engineer and geologist.

Q. Mr. Follansbee, you are familiar with what was done by the Universal Consolidated Oil Company in relation to the deepening of Well No. 6? [158]

A. I am.

(Testimony of G. F. Follansbee, Jr.)

Q. On what is known as the 6 acre parcel?

A. I am.

Q. Will you state what was done by the Universal Consolidated Oil Company in that respect?

A. In 1944 the well was deepened from approximately 4,100 to a depth of 5,918 at which point we estimated we were some 100 to 150 feet below the base of the Ford Zone. In deepening we took numerous cores from right below the old depth, right down to the bottom of the hole. We had some oil showing and in a zone from about 5,770 or 5,730 to 5,750 there was some fair looking sand which we were undecided upon at the time. After running the log, going over the thing and giving some consideration, it was my opinion that we could not get a commercial well in that lower portion of the Ford Zone. The well was then plugged back to the terminal zone and put on production.

Q. Did you determine to your own satisfaction from the examination of the log and the cores in the well that this zone was not commercially productive?

A. It was my opinion it would not be commercially productive in the Ford Zone. It was at that time and I think—

Q. You spent considerable money in deepening this well, did you?

A. It was a very expensive deepening job. [159]

Q. If in your opinion the well had been commercially productive or could have been made commercially productive you would have put it in production, I assume?

A. That is correct.

Mr. Lynch: That is all.

(Testimony of G. F. Follansbee, Jr.)

Cross Examination

By Mr. Cahill:

Q. Mr. Follansbee, Well No. 6 from the outset was a troubled well, was it not, from an engineering standpoint?

A. In what respect, may I ask?

Q. In the actual drilling didn't you experience difficulty in the drilling of it?

A. Not that I recall.

Q. Was it a slant hole? A. Oh, Yes.

Q. In reference to the top of the hole it bottoms where?

A. Down by the channel which would be approximately south.

Q. And approximately how far from true vertical?

A. That I couldn't say offhand. If you have a map here I could show you about where it is.

Q. I have the original chart here. I have Mr. Carrey's original chart or report here and I think the surveys are included therein. [160]

A. It would be in the neighborhood of from five to six hundred feet.

Q. From vertical? A. South.

Q. Can you tell from this survey, Mr. Follansbee?

A. I would like to correct that. It would not be that far, that is, 500 feet. It would be nearer 300 feet.

Q. 300 feet from vertical? A. Yes.

Q. And it bottoms somewhere close to Channel No. 3?

A. That is correct.

Q. On the original drilling do you now recall some difficulties in keeping that well in the course of the direction originally intended? A. No, I don't.

(Testimony of G. F. Follansbee, Jr.)

Q. Do you recall that that well was always the poorest producer from the Terminal horizons?

A. It was not a very good producer. Whether it was poorer than No. 7 I don't know.

Q. Do you recall whether in the opinion of yourself and the officials of the Universal Consolidated Oil Company at the time, that is, shortly after drilling, that there were certain technical matters which indicated that Well No. 6 was a long ways from a perfectly drilled [161] well—not that I am thinking of any engineering fault in the drilling, but certain problems that arose in the drilling? Do you recall any of the facts there in reference to that well?

A. No; only the fact in the drilling we didn't get it right in that corner which would have been the best possible location. Mechanically it was slow.

Q. Wasn't there also some condition, Mr. Follansbee—I am trying to recall myself because I had conversations with Mr. Williams at the time—with the fault condition that sorely afflicted that well?

A. The original well?

Q. Yes, the original well.

A. Yes. There was only a very small portion of the Terminal Zone present under that 6 acre parcel of land on this well, and on No. 7 we were able to get only the lower portion, getting the lower Terminal Zone in the neighborhood of 140 to 150 feet.

Q. You have in mind the main fault? A. Yes.

Q. Was it not also true as to Well No. 6, as distinguished from any other well on the 6 acres, that there

(Testimony of G. F. Follansbee, Jr.)

was another fault condition, other than the main fault, that afflicted Well No. 6?

A. Not that we recognized.

Q. Directing your attention to the period of the [162] deepening which was in 1944, as I recall your testimony on direct examination you looked at logs from a depth of 5,730 and 5,750 feet and decided it was pretty good looking sand and it might pay to produce the well and then you ordered an electric log, is that right?

A. No. I didn't state that I thought it would be productive.

Q. No? A. No.

Q. You said it looked like pretty good looking sand?

A. It was fair looking sand.

Q. Yes. Now to follow that through you ordered an electric log, didn't you? A. Yes.

Q. After receiving the electric log and examining it you decided to the contrary, that the sand that apparently looked good at first did not look so good?

A. That is correct.

Mr. Cahill: If the Court please, the reporter has called my attention to certain exhibits put in so far, that while they have been admitted there is insufficient designation as to numbers or how they were to be marked.

The Referee: Yes. I put a question mark on that one.

Mr. Cahill: I don't recall the order in which they went in. The list shows eight exhibits marked Trustee's [163] Exhibits 1 to 8, inclusive. I am not advised as to how many Objectors' exhibits have been received as such.

The Referee: Suppose we solve the problem and mark it 00, Objectors' Exhibit 00.

(Testimony of G. F. Follansbee, Jr.)

Mr. Cahill: Will that number be given to the electric log?

The Referee: Yes, the electric log will be Objectors' Exhibit 00.

(The document was marked as Objectors' Exhibit 00.)

Mr. Cahill: Q. I wish at this time, Mr. Follansbee, to show you Objectors' Exhibit 00 and ask you to examine it and state if you know what it is.

A. This is the electric log on Newport 6 well.

Q. This is the copy of the log you have referred to in your testimony so far?

A. That is correct.

Q. This log was obtained by you and by your company for the purpose of aiding you in determining whether this Well No. 6 should be produced from the Ford Zone?

A. Yes.

Q. The one here in evidence obtains from markings that a previous witness testified indicated the possibility of oil in black; and certain markings in red indicated in his mind water.

Do those markings there generally speaking correspond with what your findings were at that time, in 1944? [164]

A. They don't.

Q. In what way do they not, Mr. Follansbee?

A. Confining this to the interval, let us say, from 5,670 down to 5,730, there were gray sands cored within the upper part of that interval. Those sands in my opinion would carry water.

Q. Core sands are usually sands that at one time have contained oil, is that right? A. No, sir.

(Testimony of G. F. Follansbee, Jr.)

Q. They are not oil sands?

A. No, not normally.

Q. Are they essentially water sands?

A. Essentially, yes.

Q. What portion of the log there showed the gray sands?

A. Are we going to confine this to the whole thing?

Q. No. I would rather have you go through the areas marked where the witness believed there was existence of oil.

A. The first oil mark is about 4930 to -35. I had a core at 4930 to -32 which we recovered a foot and a half of oil sand with good odor in the top grading to a fair odor in the bottom. That is the only recovery of sand from 32 to 42 with a core of full recovery.

Q. The next point is where, Mr. Follansbee? It is down at a much greater depth, isn't it? [165]

A. It would be 5370 to -75. There were two cores: 5266 to -73. The first core, the recovery was 1½ feet of shale. And the core 5273 to -81 we recovered 5½ feet of shale with a few streaks of soft, fine core sand, and 4 inches of soft sticky gray ash. There was no cored oil sand in that interval.

Q. What is the next point on the chart?

A. 5490—45486 to 45491—recovered 2 feet of shale.

Q. Glancing at the log, Mr. Follansbee—pardon me, go right ahead.

A. And the core 5491 to 5496, recovered 2 feet 3 inches of shale, 1 foot 6 inches of oil sand, firm type of shaley brown, good odor and brown cut, fair saturation.

(Testimony of G. F. Follansbee, Jr.)

Q. These three points you just testified to on the log show on the log a small possible recovery as indicated in the markings?

A. I would say sand like that would definitely be wet.

Q. All three of those indicate very small possible recovery if there was oil sand there, just a few feet in between?

A. That is all, just a few feet.

Q. Now, do we approach next in order a point where apparently from the markings there should be a fair body of oil sand? [166]

A. This should be the main portion of the Ford Zone.

Q. Will you give me the top of that from the reading, please? A. It would be 5510.

Q. 5510 to where in the bottom? A. 5745.

Q. The markings on this log by the witness who preceded you, being made in pencil, indicates rather considerable oil sand in different sections between those two distances, a total of 13 I could there that are grouped relatively close together.

A. I wouldn't say that those represented oil sands.

Q. What do they represent in your opinion?

A. In my opinion that would be a water sand at 5510. 5610 is a doubtful streak. Streaks 5700 to 5720 look better on the log than on the cores. We did core some gray sands in that interval.

Q. Take the one just below the top there.

A. 5510—we had odor 5512 and 5522—a few small pieces of shale and oil sand.

Q. You had practically no recovery there?

A. Yes, we had practically nothing to go on there.

(Testimony of G. F. Follansbee, Jr.)

Q. When did you take your next core immediately following that? A. 5522 to -24, no recovery. [167]

Q. And the next one?

A. 5524 to 5530, recovered a foot and a half, one foot of oil sand, firm, fine shaley, grayish-brown, good odor and light brown cut; looks doubtful; and six inches of sandstone shale.

Q. The next group, three that are close together, in the pencil markings.

A. 5570 to 5600. 5574 to 5584, recovered 10 feet. 5 feet 8 inches was shale. 4 feet 4 inches of oil sand, soft, fine, shaley brown, with one inch streak of soft, fine barren gray sand six inches from the top, the remainder of sand has good odor and dark brown cut.

5584 to 5590 recovered four feet. Three feet of oil sand as above, six inches of sand hard to firm fine, gray grading to oil sand on bottom. Appears to be too hard and tight to carry fluid. Six inches of shale.

5590 to -96. Recovered 6 feet 6 inches oil sand, 4 inches of sand. Firm, friable, medium light gray fine. 1 foot 2 inches of oil sand, firm friable, medium shaley, slight oil odor and yellow cut. 6 inches of Siltstone. 1 foot 6 inches of oil sand, firm, friable, medium good odor and dark brown cut. 1 foot 6 inches of Siltstone as above.

Q. Where are we now on the log?

A. We are at 96 (indicating). 5596 to 5600. Recovered 6 feet 3 inches of Siltstone as above. 3 feet [168] 9 inches of sand firm, friable to hard, shale-like. Oil sand in top 1 foot grading to gray, 2 feet of shale, with few thin seams of fine gray sand.

(Testimony of G. F. Follansbee, Jr.)

Q. You have been reading from the core log, have you, Mr. Follansbee? A. Yes, sir.

Q. Will you show me thereon that part on your log which is between 5730 and 5750 where you stated on direct examination that there was apparently oil sands between those distances that looked fairly good, 5730 to 5750?

A. For 5723 to 5733 we recovered 5 feet of oil sand. Let me read this.

Q. Yes. A. Firm to hard fine medium light brown, few streaks of brown and gray shale, and 6 inches sandstone shale from bottom. Sand has fair saturation, good odor and brown cut—

The Referee: What was the last word you used?

The Witness: Cut. We use carbon tetrachloride to extract the oil from the sand. Depending on the color of the sand that shows in that carbon tetrachloride is the manner it is graded.

5733 to 5743, recovered 7 feet of oil sand, firm, massive fine to medium, good odor and brown cut.

5473 to 5753, recovered 10 feet. 1 foot of oil sand [169] as above and 9 feet of shale with streaks of oil sand totally 1 foot 6 inches, few thin streaks of gray silt.

Mr. Cahill: Q. You are below 5750 now?

A. Yes, it is at 53.

Q. Now, having that log before you and being of the opinion that there might be a possibility in the area that you last testified concerning, you obtained this electric log to either confirm or dispel your original judgment, will you state to the Court what you found in the electric

(Testimony of G. F. Follansbee, Jr.)

log after you received it, in the area 5730 to -50 that gave you a different viewpoint?

A. The deep penetration curve in that 20 or 15 feet of sand was just fair. In a good oil sand usually the third curve will more closely follow the normal curve. The fact that that low third curve and the coring of the gray sands immediately above, I was of the opinion that that 20 or 15 feet would not be commercial.

Q. Did you then stop at that point or did you take any steps to either confirm your judgment or disprove it? In other words, you run a production test?

A. No tests were run. We then plugged the hole.

Q. Did you feel at that time that you had drilled to the bottom of the Ford horizon? A. Yes.

Q. The 237 Zone had not been discovered in the general area at that time, is that right? [170]

A. No, it had not.

Q. So not having knowledge of that possibility you did not seek that or drill down to where it might have been? A. No.

Q. Do you recall, Mr. Follansbee, approximately when the 237 Zone was discovered in the same area?

A. Well, the 237 Zone has never been found productive in this area.

Q. Wasn't it produced across the channel over by the Bankline Oil Company?

A. It was produced over across the channel at a much higher structural position.

Q. And produced profitably? A. Yes.

Q. It may have been the Universal Consolidated Oil Company, but some one connected with your company

(Testimony of G. F. Follansbee, Jr.)

had a well over there that was quite productive in the 237 Zone, did they not?

A. One of the men that was connected with another deal over there.

Q. Some company that Mr. Williams had something to do with, Tommy Williams?

A. Just an employee.

Q. Not an owner? A. No. [171]

Q. Will you state to the Court, please, what would have been necessary to run a production test on this Well No. 6?

A. I believe it would have been necessary to have set a string of pipe.

Q. That is casing?

A. Casing and cemented it and tested it.

Q. That would have been from 4100 to 5750, is that right?

A. No. It would have been—I don't have the full well record here, but it would have been from somewhere in the neighborhood of 2750 or 2800 down to this 5700.

Q. In other words, the whole well had been cased to a depth of about 2750, I mean the original well, not the old well?

A. The original well had 11¾ inch cemented at around that depth. Below that we had several cement jobs which were true perforations, but in order to exclude the water it would have been necessary to have brought the casings back to that original Ranger shutoff point.

Q. At any rate there was no production test attempted of any kind either with or without casing? A. No.

Mr. Cahill: If your Honor will permit for a moment I would like to confer with Mr. Carrey, for one reason:

(Testimony of G. F. Follansbee, Jr.)

I find frequently if you leave a witness like this go the [172] other expert will say, "You should have asked this question." Besides, I am not a geologist.

The Referee: All right, sir.

Mr. Cahill: No further questions, Your Honor.

The Referee: How deep is the 237 Zone?

The Witness: It should come in here, I should think, within the next two or three hundred feet, say at 6100 or 6200, in this location (indicating).

The Referee: Any questions?

Redirect Examination

By Mr. Lynch:

Q. Where is the closest well to 237?

A. I believe the closest one would be across the channel.

Q. That is approximately how far away from this well?

A. There is no scale on this map, but I would say offhend it would be somewhere in the neighborhood of a thousand feet. It is pretty hard to guess.

Q. Have you formed any opinion, Mr. Follansbee, as a result of your knowledge of this area and particularly of this property as to whether or not the 237 Zone underlies this property?

A. In my opinion it does not.

Q. Was there anything about the nature of the hole [173] at No. 6 which would have prevented your putting down casings for the purpose of running a production test? A. No.

(Testimony of G. F. Follansbee, Jr.)

Q. If you thought anything would be discovered as a result of making a production test you could have put a casing down there?

A. Yes, there could have been a casing run.

Q. Which side of the fault was the No. 6 hole bored on, that is, as deepened?

A. Well, are you speaking of the redrill?

Q. Of the redrill.

A. It was on the west side.

Q. It is a fact, Mr. Follansbee, that practically no production was discovered on the east side?

A. There has been no production below the Ranger.

Q. On the east side of the fault?

A. On the east side.

Q. This property across the channel, would that be higher on the structure than the property here?

A. It is considerably higher on the structure.

Q. That would be on which side of the fault?

A. It is on the west side of the fault.

Recross Examination

By Mr. Cahill:

Q. I show you a map which has been marked Trustee's [174] Exhibit 6 which shows the Newport property and also shows adjoining lands marked on this map "Southern Pacific Railroad."

Are there oil wells on the portion marked Southern Pacific Railroad? A. Yes.

Q. Are there any wells thereon producing from the 237 horizon? A. Yes, there are.

Q. Are you able to tell us approximately or exactly how far those wells are from the Newport property?

(Testimony of G. F. Follansbee, Jr.)

Mr. Lynch: From the 6 acre parcel, counsel?

Mr. Cahill: Q. Yes, from the 6 acre parcel.

A. I would say in the neighborhood of a thousand—pardon me. In what zone?

Q. 237. A. Approximately a thousand feet.

Q. So it is a thousand feet either way across the channel?

A. It possibly is closer across the channel than this way. I am not sure.

Mr. Cahill: Thank you very much. I have no further questions.

Mr. Lynch: I have no further questions, Your Honor.

The Referee: All right, Mr. Follansbee; thank you.

Mr. Lynch: May Mr. Follansbee be excused? [175]

The Referee: Yes, sir, you may go right on back.

Mr. Cahill: Do you have anything else?

Mr. Lynch: No, I have nothing else.

The Referee: Any other testimony?

Mr. Cahill. I have a witness here from Long Beach. I would like to take him a little out of order. The logical thing to do would be to follow with Mr. Carrey and Mr. Meade. This expert is going to testify on one limited matter and I think we can get rid of him very soon.

The Referee: Let's hear him.

Mr. Cahill: Mr. Burgess, will you come forward, please?

CLARK C. BURGESS,

called as a witness on behalf of the Objector, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Cahill:

Q. Mr. Burgess, will you state your full name, please?

A. Clark C. Burgess.

Q. Where do you live, Mr. Burgess?

A. Long Beach.

Q. What is your business or occupation?

A. Partner of the Swanson & Burgess Company, real [176] estate brokers.

Q. You are a realtor? A. Yes, sir.

Q. How long have you been so engaged?

A. Since about 1934.

Q. At Long Beach?

A. That is right.

Q. Have you had occasion to become familiar with what is referred to generally as waterfront property in that area? A. I have.

Q. Have you had occasion recently to study the values of waterfront property on the Long Beach Harbor area?

A. I have.

Q. Have you had occasion recently to make appraisals or sales of such property?

A. No, not sales but leases.

Q. Of waterfront property?

A. That is true.

Q. For whom?

A. Long Beach Dock & Terminal Company.

Q. Are you familiar with the F. P. Newport property, particularly the 6 acre parcel in Channel No. 3?

A. I am.

(Testimony of Clark C. Burgess)

Q. Do you have knowledge of the adjacent channel [177] property, in Channel No. 2?

A. I have.

Q. Do you know of any recent transactions in reference to the lands on that channel, Channel No. 2?

A. I do.

Q. Will you state what knowledge you have?

A. As a broker I did negotiate and consummate a lease between the Long Beach Dock & Terminal Company as lessor and the Golden State Pipe Corporation as lessee. That lease was for 15 years commencing June 1, 1947, and terminating May 31, 1962. The property involved was a ground lease, surface rights only on a parcel of land having water frontage of approximately 300 feet, on the south side of Channel 2, to a depth of 521.9 to Seventh Street. The total area involved was approximately 156,570 square feet. Excluded for two wells and two tanks were 18,200. The net square footage charged to Golden State's lease was 138,370 square feet. The rental was based on 5 per cent of the fair market value of the property exclusive of improvements to be placed on the property by the lessee, and said value stated in the lease was $212,400. That was for the first five years only.

At the beginning of each five-year period to follow the rent would be 5 per cent of the appraised fair market value, but in no event less than the first five year rent which was $885 a month or $10,620 annually—taxes to be [178] paid by the lessee.

Q. Have you made a mathematical calculation based on the 212,400 determination in the lease?

(Testimony of Clark C. Burgess)

A. Approximately a little better than a dollar and a half. I would say $1.53 a square foot; in the neighborhood of $66,600 and some odd per acre.

Q. You are actively engaged in the area now in selling real estate? A. I am.

Q. Do you believe that the parcel known as the 6 acre Newport parcel is now salable? A. Yes.

Q. Do you believe that it can be sold under the present condition with wells located thereon, producing oil?

A. I do.

Q. Do you have an opinion as to what it could be sold for at the present market?

A. Well, based on this lease just consummated and another lease that we are about to consummate and by conversations with the owners of channel property, I think it could be sold in the neighborhood of from sixty to sixty-five thousand dollars an acre.

Q. In your opinion how long would it take to find a purchaser at such a price?

A. That is rather difficult to say, but I would say [179] approximately 90 days.

Q. Isn't it customary, Mr. Burgess, on the sale of property that does not readily sell, like tracts of grounds and industrial tracts, that they require a longer period to find purchasers than it does for houses, apartment houses, or flats or something of that kind?

A. That is true.

Mr. Cahill: You may cross examine.

(Testimony of Clark C. Burgess)

Cross Examination

By Mr. Lynch:

Q. Mr. Burgess, were you aware that this property had been offered for sale before? A. No.

Q. You weren't? Where is your office?

A. 150 American Avenue.

Q. That is in Long Beach?

A. That is right.

Q. Mr. Burgess, has there been any property sold within the last five years on Channel No. 2, on Channel No. 3, or any other waterfront property at $60,000 per acre? A. Not to my knowledge.

Q. Do you know of any sales of waterfront property in that area or in the Long Beach-Wilmington area for any sum in excess of $40,000 an acre? [180]

A. Not to my personal knowledge, no, sir.

Q. So your testimony as to the value of the property is based purely upon your speculation or opinion as to what the property would be worth by using a mathematical calculation, and using as your premise the figure that was arrived at artificially concerning this lease, isn't that true?

A. What do you mean artificially?

Q. As I understand your testimony the rental on this piece that was leased was determined by taking 5 per cent of what you consider to be the valuation of that property?

A. That is right.

Q. Now, in arriving at the valuation which was some $200,000 you had no sales in the area to support that valuation? A. No—that is right.

Q. So you merely arrived at that by determining what you thought was the value of the property?

A. And the lessee and the lessor.

(Testimony of Clark C. Burgess)

Q. In other words, negotiations between the two parties trying to arrive at a figure at which this property could be leased they took this formula of arriving at it?

A. Yes.

Mr. Lynch: That is all.

The Referee: Has anybody representing the bankrupt [181] corporation approached you or your firm in the last three, six, or eight months in an effort to get you to sell this 6 acre property.

The Witness: No.

The Referee: When were you first contacted down there with reference to this matter?

The Witness: Saturday morning.

The Referee: Last Saturday?

The Witness: Yes.

The Referee: That is all.

Mr. Iverson: Just a moment. I would like to ask some questions.

The Referee: Very well.

Cross Examination

By Mr. Iverson:

Q. Mr. Burgess, are you familiar with sales of property in this area? A. On Channel No. 2.

Q. On Channel No. 2. What about Channel No. 3?

A. Well, I know of no recent sales on Channel 3 or Channel 2.

Q. Do you know about a sale by the State Building and Loan Commissioner to the California Sea Food Company on December 9, 1941? A. Yes. [182]

Q. How much was that sold for?

A. I don't recall what that sale price was.

(Testimony of Clark C. Burgess)

Q. Do you know how large that parcel was?

A. Yes, approximately 8 acres, I believe, of which there was only about 100 foot of waterfrontage.

Q. You don't remember the price on that?

A. No.

Q. Are you familiar with the sale of Patten Blinn Lumber Company? A. No, I am not.

Q. Do you know anything about a sale of the Southern Pacific to Procter & Gamble? A. No.

Q. What sales do you know about in that area?

A. Recent. I may put it this way, that in my opinion that property has jumped up considerably since the end of the war and that is the time so to speak that I moved into Channel 2 and Channel 3 area for leasing.

Q. But you have not sold any property at all in that area?

A. No; just my leases and some exchanges.

Q. Are you familiar with the sale of Brooks to the City of Long Beach on December 31, 1941?

A. No, sir.

Q. Are you familiar with the Spreckels deal?

A. Not in detail. [183]

Q. On March 11, 1946? A. No.

Q. Do you know what that sale was?

A. $960.000, I understand.

Q. What was that per acre?

A. I don't know what acreage was involved.

Mr. Iverson: That is all.

(Testimony of Clark C. Burgess)

Redirect Examination

By Mr. Cahill:

Q. Mr. Burgess, your familiarity with these properties starts with the end of the war, you say?

A. Yes.

Q. Were you familiar generally with the values, very generally, as of the end of the war?

A. Well, in what respect, the rental value?

Q. No. The sale value of the property or possible sale value? As a matter of fact, there were no sales during the war, is that correct?

A. Not to my knowledge.

Q. But you do believe that since the war there has been a marked increase in price? A. Definitely.

Q. Why? What has brought that up?

A. Well, I would say that this, the Southern California and the channel area was somewhat discovered [184] during the war as a place for light manufacture and warehousing and the type of business that must go in a harbor area.

Q. You think the war brought about a recognition of those factors and it is desirable for those reasons?

A. That is correct in my opinion.

Mr. Cahill: That is all.

Recross Examination

By Mr. Lynch:

Q. Yet you know of no sales since the war at anywhere near these prices that you have referred to?

A. That is right.

Q. I show you a photograph—

The Referee: Is it marked?

(Testimony of Clark C. Burgess)

Mr. Lynch: No.

Mr. Iverson: That is No. 6, I believe, from Tom Cunningham?

Mr. Lynch: No, this is the aerial photograph.

Mr. Iverson: That is No. 8.

Mr. Cahill: There it is, Trustee's Exhibit No. 8.

Mr. Lynch: Q. I show you Trustee's Exhibit No. 8 which is an aerial photograph of the area. Can you point out on that photograph the property that was leased and concerning which you testified?

A. Yes. It was east. I take it this is the Procter [185] & Gamble plant?

Q. Yes, that is the Procter & Gamble plant.

A. It was approximately in there (indicating).

Q. Just east of the Procter & Gamble plant?

A. Not just east. I think the first property is the Breslin property.

Q. It adjoins the Breslin property?

A. That is right.

Q. Along the front of that property there was a sea wall?

A. There was a dock in need of some repair. I think there was considerable piling that had to be replaced in this dock.

Q. But there was a wall of some kind, either by piling or concrete? A. That is right.

Q. You notice the property is eroded heavily. There is no wall there.

A. Yes, I noticed that.

Mr. Lynch: That is all.

(Testimony of Clark C. Burgess)

Redirect Examination

By Mr. Cahill:

Q. What is the distance approximately between the Newport 6 acres and this portion on Channel No. 2 as to which you have made the lease? [186]

A. Well, the Newport property goes to the south line of Seventh Street. The Long Beach Dock & Terminal Company goes up to the north line of Seventh Street.

Q. The two parcels on different channels practically touch?

A. They are separated by the width of Seventh Street.

Q. In your opinion, Mr. Burgess, are the two properties, one comparable with the other?

A. I think so.

Mr. Cahill: That is all, your Honor.

The Referee: All right, sir, you may stand aside.

Call your next witness.

Mr. Cahill: I will call Mr. Carrey.

Mr. Lynch: I think we can all stipulate to Mr. Carrey's qualifications and the Court is aware of them.

The Referee: Yes. I have been signing his checks for two or three years.

Mr. Lynch: I don't think Your Honor needs to waste any time on it.

The Referee: We will assume he knows his business until some one tells us to the contrary.

Mr. Cahill: I will ask one or two questions so that there will be some record that he is qualified. [187]

ALBERT A. CARREY,

called as a witness on behalf of the Objector, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Cahill:

Q. Mr. Carrey, what is your full name? A. A. Carrey? A. Albert A. Carrey.

Q. Where do you reside?

A. Long Beach, California.

Q. What is your business or occupation?

A. I am consulting geologist, petroleum engineer, and also operate an oil company.

Q. How long have you been so engaged?

A. Since 1937.

Q. You are a graduate of what school?

A. Stanford University.

Q. What matters?

A. In the Department of Geology, 1922.

Q. Are you also a petroleum engineer?

A. Yes, sir.

Q. Were you at one time or another employed as geologist or chief geologist for various oil companies?

A. I worked for various companies, most of the time for a company that is now the Texas Company. I was in [188] charge of their geologic department for two years. That is the biggest company I have worked for.

Q. You have also had a varied experience in drilling and producing wells?

A. Yes. I have operated two or three companies, drilled several wells, several wild cat wells and quite a few wells on Signal Hill.

(Testimony of Albert A. Carrey)

Q. You have been employed by Mr. Metcalf in this matter for a good many years, have you?

A. Yes, sir.

Q. As petroleum engineer? A. Yes.

Q. You have also rendered a report which is on file in this case as of October 1, 1939?

A. That is correct.

Q. Entitled "Valuation Report of the F. P. Newport Company Royalty Interest, Wilmington Oil Field"?

A. Yes, sir.

Q. You also have testified in this matter, the F. P. Newport matter many times, have you not, in reference to the oil and oil matters in this estate?

A. Yes, I have. Several times.

Q. Are you familiar with the lands that comprise the Long Beach-Wilmington Oil Field? A. Yes, sir.

Q. Are you familiar with the block, I think they [189] call it, that contains the Newport properties?

A. Do you mean the geologic block?

Q. Yes. The geologic block. A. Yes, sir.

Q. That is Block No. 5?

A. Some designate it as No. 5, yes.

Q. Approximately how many wells are located in that block?

A. I have never had occasion to add the number of wells in that particular block.

Q. There are a very large number of wells?

A. Yes. I would guess probably more than 100 wells in that block or 150, perhaps.

(Testimony of Albert A. Carrey)

Q. They are on the lands of not only the Newport estate and Southern Pacific and other companies?

A. It extends in a north-south direction. It takes in two channels and then the Hancock Oil Company, and then various smaller owners in the Town lot area and runs out into the ocean.

Q. The drilling of approximately 100 wells in that block was into what horizons or known zones?

A. There are wells producing in that block. I think originally the Lower Terminal Zone and the Upper Terminal Zone and then Ranger, and then successively they call it Tar Zone which is an upper zone, and then successively the Ford Zone, and then the 237 Zone, I think, in that [190] sequence.

Q. Was there an agreement for a time to produce only from those zones and horizons other than the Ford and 237 Zones?

A. Yes. For several years the wells were curtailed and there was some sort of a mutual agreement between the companies that they would refrain from going into any deeper zones.

Q. In this particular block that we have under discussion, what year was a test made of the Ford Zone of which you have any knowledge.

A. That I couldn't say without going through the records. The Ford Zone was divided over there northwest, in the Wilmington area, and it proceeded and cut toward the Long Beach city line. This agreement was only in the boundaries of the City of Long Beach. It didn't go into the Wilmington Field. There were a lot of wells producing from the Ford Zone in the Wilmington area before they came into the Long Beach area. Just when

(Testimony of Albert A. Carrey)

that was or which wells I wouldn't know, but I believe it was on the Union Pacific property over near the Ford plant. I think that is where the first Ford Zones were drilled in the City of Long Beach area.

Q. Those wells were quite productive, were they not?

A. A good many of them have varied considerably in [191] Ford Zone. There isn't a consistent production.

Q. Was there a situation of quite a good well or a fairly good well and one that was right close to it not nearly so good? Do you have that situation?

A. Not that so much as in different areas. The wells were more or less the same production in the local area, but for a few hundred feet or a thousand feet they would operate. There was a difference of thickness of sands in the Ford area. In some places they seemed to be of greater thickness than in other areas of the structure.

Q. Do you recall approximately the year there was a well drilled into the Ford Zone close to the Newport property?

A. Well, there again, without going to the records, I wouldn't know which well. There were two wells, I believe now on the General Petroleum—S. P. property. I would say those were drilled about—well, the first one probably not over 2½ years ago. That was roughly about the time.

Q. We had testimony this morning from Mr. Follansbee that the Universal Consolidated Oil Company deepened Well No. 6 on the Newport property in 1944. He didn't give us the month and I didn't ask him, but he said the year 1944.

A. As I recall this well drilled by Universal was one of the first wells drilled in that area deeper than the

(Testimony of Albert A. Carrey)

Terminal Zone. I think that was done prior to the time that almost anybody was making it at the time of the agreement. [192] There was more or less a mutual agreement when this well was drilled.

Q. In your work for the Trustee herein haven't you had as part of your duties to keep in touch with what other producers are doing concerning this lease?

A. Well, I receive a daily report and I do keep up to some extent on not all of the property, but I do try to keep up with the wells placed on production. I don't have all of the production data on the wells.

Q. So far in this proceeding, as I recall, Mr. Carrey, you have been asked on one or more occasions to give your opinion as to whether the Ford Zone did underly the Newport property. You have heretofore rendered an opinion several years ago, I believe, in this matter.

A. That is true. I rendered one in that report and I think I rendered an opinion once or twice since then in different matters.

Q. Do you have any present opinion as to the Ford Zone, whether it underlies the Newport property or not?

A. Are you referring now to just the 6 acres?

Q. The 6 acre parcel, yes.

A. Well, my opinion is that the evidence in the electric log that was taken on the well, and the core record, that there was evidence of accumulation of oil. The amounts possible to production is still high so it is a moot question. The fact the sands are there and there was [193] saturation is evidence there might be some kind of production. But I don't think anyone knows today because the company who drilled the well did not make a test on it, they did not think in their opinion that it was

(Testimony of Albert A. Carrey)

perhaps worthy of a test, but there were oil sands cored, and the electric log verifies the fact there was some saturation.

Q. When you say test you are referring to a production test?

A. Yes, where they would have to set a string of casing and determine the productivity of the sands.

Q. That is the common and accepted procedure, to make a production test?

A. That is the only way you can do it except sometimes you can take a formation test, but the real test is the setting of casings and making proper tests to decide whether or not to produce commercially.

Q. Isn't it true that even where production tests are taken and are fully and completely made as to a particular well, that upon the end thereof, and having the data from that test before you, that experts conclude as they must, that the test as to the land involved is not conclusive?

A. I don't know as I understand your question. Would you read it to me?

Q. I will reframe it. I am asking if it is not frequently known that a production test actually made of a [194] certain well on certain lands, upon its conclusion, after the results of the test being available, that the test is not conclusive as to whether oil in those particular horizons underly those particular lands in productivity quantity?

A. Well, I would say yes. That has happened. I have seen it happen where a test may not be conclusive. Perhaps in an instance where the company may not have tested sufficiently long. There may have been infiltration

(Testimony of Albert A. Carrey)

of mud which penetrated back into the sands, and by virtue of not being sufficiently strenuous and doing certain things sometimes down on production tests—the mud may have been completely removed and thereby not give the sand a chance. I have seen that happen.

Q. That is where a casing is run and a production test is made? A. Yes.

Q. It is still not conclusive in certain instances?

A. Sometimes it is not conclusive, that is right.

Q. Let me ask your opinion on this question, Mr. Carrey. Assuming that the Universal Consolidated Oil Company had run a casing to a sufficient depth in this well, after the redrilling and had run a production test, do you believe that any production test as to the 6 acres, limited to Well No. 6 alone, could ever be conclusive as to the whole 6 acres? [195]

A. Well, I would say if the well was completed mechanically O. K., that is, no difficulties in drilling, and they punctured the zones, that the location of the bottom of the hole in No. 6 is at its most favorable position on the 6 acres; that is, from a structural standpoint the bottom of that well is at the most favorable position.

Q. Do you recall the early history of that well in reference to what is commonly referred to as grief in reference to the well?

A. I don't recall any particular grief. It was a directionally drilled hole and all directionally drilled holes are not as easy to drill as straight ones. They had undoubtedly a lot of difficulty. I don't think any directional holes are without trouble. They are hard to drill and that particular job was a little tough because they had to hit

(Testimony of Albert A. Carrey)

a target, in other words, so that they did have some directional difficulties as I recall.

Q. Mr. Follansbee testified in his opinion that it bottomed approximately 300 feet from true vertical.

A. Without measuring it on the map I think that is around about the distance, yes. That is bottomed pretty close to the southwest corner of the lease.

Q. Wasn't it true on the Terminal Zone that well went off production and was constantly being worked on?

A. As I recall the well has had trouble. I think it was mostly sand trouble from the Ranger Zone which was [196] the only producing zone at that time east of that fault, and at a lower portion of the Terminal I would say.

Q. You heard the testimony of Mr. Follansbee this morning, that having drilled the well and examined the core log and other data he said there was sand between 5730 and -50, and as I got his words, it was a fair looking sand and possibly worthy of a production test, and that the company proceeded to obtain an electric log and after having received the log, that the original favorable opinion was changed somewhat. Do you recall hearing that testimony?

Mr. Lynch: I object to the question on the ground it assumes facts not in evidence. Mr. Follansbee did not testify that in his opinion it was worthy of a production test.

The Referee: I don't recall exactly what he said, gentlemen. You will have to have his testimony read back if there is any controversy.

Mr. Cahill: The only thing I am attempting, I wanted to get it as accurate as possible.

(Discussion omitted.)

(Testimony of Albert A. Carrey)

The Referee: All right. What is the next question?

Mr. Cahill: Assuming the Universal Consolidated Oil Company having before it the core log showing the possibility of productive sand between 5730 and 5750 feet, and then receiving an electric log and examining that log, [197] and concluded that it was doubtful that those sands would be productive—I am going to ask you to examine that log at that point and state whether in your opinion in any portion thereon which would indicate that it would not have been wise to run a production test?

A. Well, my opinion is, and I felt at the time, and still feel, that there is there, was and still is some possibility of production. As I say, this is my opinion. If I had been on that well I believe, I am sure that I would have recommended that a solid string of pipe be run. I mean by that, casing, and do certain under-framing betwen these points which showed some indication of oil or which place is between 5730 and -45.

Q. Are there also other points in your opinion indicated which should have been tested?

A. There are some points. The sands are not very thick, but I would have advised to run a solid string with proper type of cement job so that you could shoot the places for production. Not only one place—you could try it first and then successively come on up and test these so that if the job was performed properly the various three or four or five places that indicate possibilities, some place may be only a foot, but the accumulation of all of them I think in my judgment would have possibly made some kind of an oil well. Then it is an opinion of how much oil and I am in no position to say how much. [198]

(Testimony of Albert A. Carrey)

Q. You are of the opinion that commercial production might have been possible?

A. I know I would have been in favor of making that type of test if I had been in a position to make the recommendation. In my experience so many times I have seen where sometimes these eleceric logs do not show too good. Sometimes even the cores do not look too good. But the final answer is the test and the rest is opinion and judgment, based on how much experience a man has had. I am a great believer of testing any sand with oil in it. I have seen them come back too many times later and produce oil from zones that some of us thought at one time were not productive.

Q. In your opinion the only method that can at all approach the conclusive is the production test?

A. That is the only way that is final and conclusive, to prove the capabilities or productive qualities of any sand.

Q. You are examining an electric log which is in evidence in this case as Objectors' Exhibit 00. I state to you that that is the number of the exhibit. You are examining that log now, are you? A. Yes, sir.

Q. Are these markings in pencil your markings or Mr. Meade's markings?

A. I think this is my log. [199]

Q. Yes, I know it is your log.

A. I see my name on it. I took the core record and those markings I put in color to save going back over the core record. I often do that. Red represents water and the black was possible sands that had oil of some degree in them. That is so I don't have to go back over and read the written record each time.

(Testimony of Albert A. Carrey)

Q. With reference to the 237 Zone do you have any knowledge of that as to this particular area and these particular lots?

A. That particular zone has not been tested in this 6 acres. The closest, I believe, is on the General Petroleum-S. P. property.

Q. How far away is that, that is, the well that has the test on it?

A. I would have to measure it on the map but I would say it is probably seven or eight hundred feet or maybe a thousand feet, without measuring it.

Q. Is it productive there?

A. Later they found some zone—

Q. Do you have an opinion whether that zone might underlie the 6 acre parcel?

A. I think the sands are there and I personally believe that there might be a chance. There is a fair chance of production. The location, however, on the 6 acre parcel is not as good structurally as the S. P. [200] property. It is lower and it is closer to the fault that intersects that property. I base my opinion that the 237 Zone is possibly saturated to some degree to the fact that the Ford Zone had some saturation. It is reasonable to believe if the Ford sands had some oil in them that the sands that abut the schist there in the 237 will also, and they might have more saturation because the 237 Zone is a great deal more productive zone than the Ford Zone.

Q. In other portions of the field?

A. In other portions of the field the 237 Zone is a little better because the sands are thicker. There was more thickness of sands in the 237 Zone than the Ford Zone.

(Testimony of Albert A. Carrey)

Q. The 237 Zone has never been tested on the Newport property, has it?

A. No. It didn't go quite deep enough in this well.

Q. You maintain wells drilled into that property on the 6 acres might have valuable production?

A. You can't say it wouldn't because it is within the boundaries of production in the Lower Terminal with the Ranger on the other side of the field. There is some saturation in that Ford Zone. I don't think anyone can say no, that it is impossible.

Mr. Cahill: No further questions of this witness. [201]

Cross-Examination

By Mr. Lynch:

Q. You are familiar with the provisions of the lease to which counsel referred this morning, particularly that portion of it which reads as follows:

> "For a failure of the Lessee, when reasonably necessary and proper so to do, to develop any known commercially profitable zone or stratum the Lessors may forfeit the right of the Lessee to develop or produce any such zone or stratum or any zone or stratum below any depth from which the Lessee may then be producing on said premises, or the Lessors may pursue any other remedy given them by law hereunder."

You are familiar with that provision in the lease?

A. Yes. I read that some time ago.

Q. A a matter of fact we discussed it in our office approximately two weeks ago, didn't we?

A. Yes, I think so.

Q. Subsequently to the time we ascertained the results on this particular 6 acres? A. Yes.

(Testimony of Albert A. Carrey)

Q. Are you prepared to say at this time that the Trustee should forfeit the lease as to this particular zone?

A. Which zone do you mean?

Q. The Ford Zone. [202] A. The Ford Zone?

Q. On the basis of the facts as you now know them?

A. You mean on the basis of this particular paragraph that you just read?

Q. Yes, and on the basis of the evidence, what was done in relation to No. 6 and the production there?

A. I don't think that test was made. There was no test made. They merely drilled into the sand and it was a matter of judgment and opinion.

Q. That is right. But on the basis of the evidence and the facts now known to you would you be prepared to recommend to this estate that the rights of the Universal Consolidated Oil Company in their lease to develop that zone be forfeited?

A. I don't believe I would go that far. I don't believe there has been production close enough to the property, and the fact, as I stated a little while ago, that this particular 6 acres is in as well located as closest 237 or Ford Zone there, but I don't believe that the zones have been thoroughly nor properly explored. I really believe that.

Q. If we succeeded in cancelling or forfeiting the rights of the lessee to develop that zone, if there is such a zone underlying the property, in light of the evidence and the information before you, do you believe that the Trustee [203] could obtain any company or any lessee who would go in there and drill a well to the Ford Zone?

A. Well, I think not, for two reasons. One is, under the State law as it is, you couldn't drill a new well without the abandonment of one of the other wells.

(Testimony of Albert A. Carrey)

Q. That is right.

A. Or you would have to get your permission from the Universal Consolidated Oil Company to purchase or deepen it. No other wells could be drilled at the present time.

Q. Assuming a well could be drilled with arrangements with Universal Consolidated Oil Company, do you think it would be possible in view of the others and what was discovered in the drilling of No. 6 to a deeper zone to find a lessee who would at its own expense drill a well to that zone on Parcel No. 2, or the 6 acre parcel?

A. Oh, I think there is sufficient evidence which probably enters further into it, but whether someone would do it I am not in a position to say whether they would. I think there is sufficient evidence to warrant a test, but whether someone would want to drill a new hole, I don't know.

Q. Do you remember our discussing this matter approximately two years ago after we got the report on what had been done in relation to No. 6 and we particularly inquired from you at that time if you thought the evidence [204] would justify our attempting to forfeit this, and your answer was substantially the same as you now give, that you didn't think it was?

A. I had forgotten that answer.

Q. You remember also you said at that time you didn't believe it would be possible to find anyone who would undertake to drill that property to that zone on the 6 acre parcel?

A. Yes, and the answer at that time was probably based on just the Ford Zone, but since then—

Q. The Ford Zone only? A. That is right.

(Testimony of Albert A. Carrey)

Q. We were not discussing the 237 at that time?

A. My answer should be different now. If that was my answer then it should be different now because another zone has been developed, a better one which gives you two possibilities instead of one.

Q. But do you believe you would now in view of evidence that a lessee could be found who would drill a well on the 6 acre parcel through to the Ford or to the 237 at his own expense—I realize somebody could be hired at the Trustee's expense if we had the money to do it.

A. Well, at this particular time oil is in such great demand and I know a lot of places they are drilling with not as much possibilities as that. I would say yes, I believe that someone could be induced with the evidence [205] perhaps to drill a well to both zones, the Ford and the 237.

Q. On this 6 acre parcel? A. That is right.

Mr. Lynch: That is all.

The Referee: All right, sir.

Mr. Iverson: I have a few questions.

Cross-Examination

By Mr. Iverson:

Q. Because of the location of the fault there, Mr. Carrey, isn't it true there is only a small portion of the 6 acres that can be used to drill in order to bottom it in the 237 or Ford Zone?

A. That we don't know. We know the fault is intersected by No. 6 on the west side of the property at a high enough depth to assure that both zones are there. That field has a vertical angle to the east. If you intersect it

(Testimony of Albert A. Carrey)

you go underneath it. I am not in a position to say just how much of that 6 acres, whether it would be all good or maybe 50 per cent of it or less, but I would say that a good portion of it is at least possible for production due to the fact that the evidence we have in the No. 6 deepening. But how much of the 6 acres I wouldn't care to say. I don't think anybody knows that.

Mr. Iverson: That is all.

Mr. Cahill: Just one question, Mr. Carrey. [206]

Redirect Examination

By Mr. Cahill:

Q. During your absence the matters contained in your letter to me of October 17, 1947, were by stipulation read to the Court and by stipulation was received in evidence. I direct your attention now to one portion of that letter and I propose to ask you one question in reference thereto. I will read to you from the second page of your letter as follows:

> "It is my opinion that if this sale is made that the present landowner, the F. P. Newport Corporation, will suffer a decided loss in the sale value of their land-owner's interest. It has been my experience there are few buyers for overriding royalties as most royalty buyers prefer mineral interests."

I will ask you if you have an opinion in reference to the decided loss that you speak of there, as to what that loss would be in percentage.

Mr. Lynch: I object to that on the grounds it is wholly irrelevant and immaterial in this matter. We are not attempting to sell the landowner's royalty interest.

(Testimony of Albert A. Carrey)

The Referee: It is highly conjectural and speculative. It depends on what type of buyer you can find and what kind of seller you have. The objection is sustained.

Mr. Cahill: I will state to Your Honor that under an [207] offer of proof I would like to prove from this witness, noting that we already have testimony of the expert Meade, that in his opinion the loss to this estate by the very fact of this sale would be 25 per cent; that this witness if allowed to answer the question which I propose to ask him as to what in his opinion the loss would be will state that the loss in his opinion would be much higher than 25 per cent.

Mr. Lynch: I object on the ground it is wholly immaterial in this matter, there not pending at this time any sale of the landowner's royalty interest.

The Referee: That is true. The only thing to be sold now are the surface rights.

Mr. Lynch: That is right.

The Referee: Objection sustained and the offer of proof is denied. I want to get to the end of this by 4:00 o'clock this afternoon.

Mr. Cahill: I have no further questions of this witness.

The Referee: I will tell you frankly I want to conclude this matter by 4:00 o'clock. I have heard about all I think I want to hear on it. I am mainly interested in the value of it. These values run from $390,000 down to Mr. Mason's figure of $196,500.

I will see you at 2:00 o'clock.

(Whereupon, the hearing was adjourned until 2:00 o'clock p. m., this day.) [208]

Los Angeles, California, December 1, 1947.
2:00 P. M.

ROY G. MEAD,

having been previously duly sworn, was examined further and testified as follows:

Direct Examination

By Mr. Cahill:

Q. You have been heretofore sworn and testified in this matter? A. Yes, sir.

Q. Have you had an opportunity during the course of this day to listen to the testimony given by Mr. Follansbee?

A. Yes, I was present in court when Mr. Follansbee testified.

Q. During all of his giving of his testimony on direct examination, cross-examination and redirect examination?

A. Yes, I heard all of his testimony.

Q. Is that the same as to the testimony given by Mr. Carrey? A. That is true, yes.

Q. After having heard the testimony of those two experts, do you remain of the opinion that as to this 6 acres, that the Ford Zone lies thereunder? [209]

A. Yes, I am still of that opinion.

Q. And that there might be a possibility of profitable production from that zone?

A. Yes, that is my opinion. I wouldn't know how much production, but there is a possibility of some production in my opinion.

(Testimony of Roy G. Mead)

Q. Do you also have an opinion at this time after having heard their testimony in reference to the possibility of production from the 237 Zone?

A. I am of the opinion that the 237 Zone lies under this property as well as the Ford Zone.

Q. Do you think that the production might be profitable from that?

A. It might be more profitable in the 237 Zone than the Ford Zone.

Q. Do you think that both those zones should be drilled in and tested by production tests?

A. By all means I do.

Q. The question was asked of the witness Carrey on cross-examination whether in his opinion it would be profitable for the Trustee herein to obtain people who would go in and be willing to drill those zones and run a production test at their expense provided that we had obtained the right to do so.

A. I do, providing there would be no legal objection to the drilling of a well. Of course, under the State law, [210] there can only be one well to an acre and that objection would have to be removed.

Q. I will have to limit my question to this proposition that if in some manner it would be possible legally to either drill a new well or to drill a deeper one in one of the existing wells, do you believe that oil people or financiers could be found that would come forward who would be willing to make a contract with the Trustee?

A. I do, what with the scarcity of oil right now, and the attitude that the people in the oil business are taking towards drilling oil zones on properties that heretofore weren't considered profitable.

(Testimony of Roy G. Mead)

Q. Do you, yourself, have knowledge of some such people?

A. Well, I know people that probably could be interested in such a proposition. I am not a broker; I couldn't interest them. I know I have clients that are investigating the viewpoint of drilling properties that don't look any better than the Ford Zone or the 237 Zone on this property.

Q. So you remain of the opinion that subject to the conditions I have outlined, some responsible person might be found? A. That is true.

Q. And that if they drill, there should be production in your opinion? [211]

A. Providing that too much time doesn't elapse when drainage would take place from those zones.

Mr. Cahill: No further questions.

Cross-Examination

By Mr. Lynch:

Q. You are still of that opinion, considering the experience of the Universal Consolidated Company, which is an old and reliable oil company?

A. I didn't express any opinion about the Universal Consolidated Oil Company.

Q. You are still of the opinion that in spite of the experience of the Universal Consolidated Oil Company, having spent many thousands of dollars in drilling this well in the depth it is drilled and having determined from that zone that oil cannot be produced at commercial quantities, are you still of the opinion that someone could be

(Testimony of Roy G. Mead)

found, knowing of that experience, who would go and drill a well in that zone?

A. Well, the action of what somebody else would do would depend on the geological conditions and on what data has heretofore been obtained by wells drilled.

Q. Including the experience of the Universal Consolidated Oil Company in drilling a well?

A. I wouldn't say that would make any difference one way or the other. I believe another operator would be [212] guided entirely by such facts as are obtained from wells that had been drilled and geological evidence.

Q. Can you suggest to me and to the Court any reason why the Universal Consolidated Oil Company, having drilled this well and determined it was not commercially profitable, would abandon it if they felt that it was?

A. Well, I wouldn't say that they have abandoned it; they can still take the plug out and run the casing in that well. So they haven't abandoned the well.

Q. They never intended to produce oil, did they?

A. They didn't run a string of pipe in the hole and cement it and perforate it so that it could be tested; that remains to be done.

Q. As a matter of fact, it is true, isn't it, that having withdrawn and plugged the hole, that they would have to redrill, if they were going to attempt to produce oil?

A. They would have to drill out the plug that they have put in, which is not a difficult matter, and clean the hole out and then it would be in the same position it was

(Testimony of Roy G. Mead)

in before they plugged it. They fill the hole up with mud and then put a plug in on top of the mud. That is easily cleaned out. They put a cement plug in, but they can drill the cement plug and that is done universally.

The Referee: But, in drilling through that type of soil, will the hole remain intact without piping or without some steel to reinforce it? [213]

The Witness: That formation that they drilled is a consolidated formation; it has sand beds and it will remain open; it wouldn't cave as long as they fill it with mud. When they drill the hole, they use rotary mud that cakes the hole and they put more mud, heavy mud, and then they put the plug on top of that.

Q. Can you suggest the names of anyone whom the Trustee might contact to determine whether or not they would be interested in drilling a well on this 6 acre property, to this so-called Ford Zone? Can you suggest the name of any person or corporation who might be interested?

A. No, I am not a broker and while I have clients I don't make it a practice to suggest any opportunities to my clients. That is more of a brokerage business.

Q. Would you suggest to the Trustee anyone that he could contact to find out whether they would be interested?

A. No, I wouldn't do that. If I were going to make any suggestions I would make it to clients of mine or people that I thought might be interested. I wouldn't act as a broker on the matter. That would weaken my position as a professional man.

Mr. Lynch: That is all.

Mr. Cahill: No further questions. [214]

H. F. METCALF,

having been previously duly sworn, was examined further and testified as follows:

Direct Examination

By Mr. Cahill:

Q. You have been heretofore sworn?

A. Yes.

Mr. Lynch: I might make this observation at this time, because it becomes appropriate from the testimony of the previous witness, that if Universal Consolidated Oil shall go in and reopen that hole, and drill in new wells, whatever rights the lessor has under this lease, that we still retain, that any new development by the Universal Consolidated Oil inures to our benefit.

By Mr. Cahill: Q. Mr. Metcalf, I find in the files of the Referee herein a letter which I am going to show you, to refresh your memory, possibly. The letter is dated January 16, 1946, addressed to Judge Hugh L. Dickson and it is in reference apparently to certain advertising that you did in numerous papers and I will ask you if that letter refers to advertising that was done in all those numerous papers described therein, in reference to this 6 acre parcel? A. Yes, it was, definitely.

Q. I notice also, Mr. Metcalf,—I will ask you [215] to read the third paragraph of that letter—let me read it for the purpose of the record.

> "We have had a great many calls in answer to this advertisement. Very largely from brokers, but also others such as the Graham Brothers, Richfield Oil Company, the Case Company, and many others."

Do you recall now that matter having been directed to your attention, that after you did run the advertise-

(Testimony of H. F. Metcalf)

ments in these numerous papers which you previously testified to, you gave a list and that is substantially the same list as herein, is it not? A. Correct.

Q. Do you recall having received, as stated in the last quoted sentence, "the calls from brokers, the Richfield Oil Company and others?"

A. Do I recall it?

Q. Yes.

A. Yes, I do; I had a good many calls at that time.

Q. It looks like you had received a very substantial response from those advertisements? A. Yes, fair.

Q. And those advertisements I think you previously testified were all run in the month of January of the year 1946?

A. I think that is correct, on or about that time. [216]

Q. Nothing further in reference to that matter, but in reference to another matter, I direct your attention now to a letter dated July 2, 1947, in the same file, addressed to the Referee herein signed by yourself and I direct your attention to the paragraph on page 2 of the letter which reads as follows:

> "The writer has a tentative deal on the Procter & Gambel Company for the sale of the surface rights of the 6 acres of land in Channel No. 3. We have asked a price of $374,000 for this, and the matter is now awaiting the outcome of a survey which is being made at the present time."

Having called that to your attention, I will ask you, Mr. Metcalf, if the recital contained therein, that a price of $374,000 had been asked of Procter & Gamble for the property, is true? A. That is true.

(Testimony of H. F. Metcalf)

Q. And now, how did you on or about July 2, 1947, arrive at that price as an asking price?

A. I pulled it out of the air.

Q. Do you really mean that, Mr. Metcalf, from your experience as a realtor?

A. Mr. Counsel, I figured that I would ask as high a price as I could possibly ask and look them in the eye and subsequent to that my instructions were that they would [217] send an engineer out here which they did. I entertained him for two or three days. I have forgotten his name—Mr. Bergen could tell you—McWater was his name, I recall now. We drove down to the beach and we looked it over carefully. We had had, I think, previous to that a survey made of it showing the location of the wells. He was very anxious to know exactly where the wells were and how much ground was available for their purpose and after a rather exhaustive survey of the ground, he said that the price I had quoted was completely out of reason so far as they were concerned. I followed that up and questioned him as to what he thought it was possibly worth to him. He said $180,000 was the best offer that he would make to the Court and I pressed him for a higher offer and he said no, that is the best offer that I can make to my house with a clear conscience. Later on, Mr. Bergen or his associate, Mr. O'Melveny raised that price $5,000, making it $185,000. I demurred at that. I said the price I am creditably informed is too low. He said he would pay a much higher price if they could use the property. But he said the location of the wells precluded any very appreciable use of it until the long future. I said you have 150 feet of waterfront and he said, we don't need any waterfront. We have 1200 feet

(Testimony of H. F. Metcalf)

where we are and we don't need any. And, he insisted that the only use they had was a soft ball diamond to be put on Seventh Street. As Your Honor knows, we submitted the [218] check here and the check was returned to Mr. O'Melveny in Mr. Bergen's absence.

They subsequently offered Your Honor $198,000.

I have had a great many calls on this. I had one man who said he might take it for $200,000 and without any reclamatory work on it provided we could move or obliterate Well No. 6. That didn't seem feasible. I got a price of it after many discussions with Tommy Williams and Mr. Starr and it didn't seem a feasible thing and it would put it out of reason. I had other calls, Graham Brothers, the Richfield Oil Company. I don't recall any others. I had a good many Long Beach brokers who spotted my ad and came in to see what could be done. I submitted this to them and they all said almost with one accord that the distribution of oil wells is such as to preclude the complete use of the property for 15 years and that is too long to wait.

Q. When you say, as you just have, that brokers came in, in response to your ad, you are referring to the series of advertisements run in the month of January, 1946?

A. That is right.

Q. Is it fair to state, Mr. Metcalf, that when you wrote this letter on July 2, 1947, that you were of the opinion that $374,000 represented approximately the highest maximum price which you might expect to obtain for this property?

A. Mr. Counsel, I didn't expect to get that price [219] at all. But, in common, in this rather tricky market, I felt that I could easily come down but I couldn't go up.

(Testimony of H. F. Metcalf)

I didn't expect to get that price but I figured I would ask plenty for it and see what developed.

Q. You did expect, however, to get somewhere close to $374,000, did you not?

A. I don't recall that I did. I was totally at sea as to what this would bring. It depends on getting some peculiar set-up that can use that kind of a lot and are willing to wait 15 years for the rest of it. I think it is almost certain from such information as I could get from experts that the property will be productive for 15 years; at least, that has been the general opinion from Mr. Carrey and others.

Q. It is possible, is it not, Mr. Metcalf, that the wells, in the place, as they are, can still find some individual or company who might be able to utilize the surface rights during that 15 years?

Mr. Lynch: We have got an offer here from people that will pay for it and use what surface rights they can get under an arrangement with the Universal Consolidated Company.

The Witness: I have been industriously looking for someone who could use Channel No. 3. We kept 500 feet of frontage there, 150 feet deep clear of encumbrance. We kept a foot roadway there. That is a kind of a client to look for. Don't waste your time looking for somebody who [220] has to have huge buildings on this lot because Mr. Starr will object to them if they come too close to his wells and it is not good. The lots are divided in such a way that you can't get big buildings in there. That is not proper. Now, I have been trying throughout this whole deal to find somebody who could use the waterfront because that is unencumbered and that is valuable.

(Testimony of H. F. Metcalf)

Q. By Mr. Cahill: Let me develop that just a moment. As I understand you, the Trustee reserved at the time you made the oil lease, a parcel of land which is the 500 feet of waterfront, to a depth of 150 feet, upon which no wells were placed or tanks placed thereon, is that correct? A. That is correct, yes, sir.

Q. Is that piece available?

A. That piece is available for us if and when it is properly bulkheaded and filled. By the way, I got tentative prices greatly in excess of what has been testified to in this court. I am not attempting to testify to that at this time. But, I think they can build a proper bulkhead for $100,000, although I don't think so, maybe more nearly $200,000 for a proper bulkhead.

Q. Whoever goes in there wants to use the waterfront itself to bring in a vessel. They will have to build there a certain particular type of piling and wharfage for the unloading of vessels. [221]

A. It is only concrete piling properly protected against washings, that is all. Or it could be made of wooden piling. I don't think concrete is absolutely necessary.

Q. I find a reference here—

Mr. Lynch: I object to the witness being examined as to a letter not in evidence. Why don't you put it in evidence?

The Referee: It is in my file.

Mr. Cahill: I will offer the letter. I will offer the letter of July 2. I did want to direct the attention of the witness to one sentence in reference to refinancing.

> "Another matter which to some extent has delayed the closing of the estate, is the fact that the property has been appraised by money-loaners who have agreed to loan the sum of $400,000 for the entire estate."

(Testimony of H. F. Metcalf)

I ask you what knowledge you have of the proposed refinancing?

A. I had very little information up until a month ago and then I asked Mr. Newport who was conducting that, to take me to his principals which he did and we had a very pleasant interview and I found the Western Insurance Company—I think it was Western States Life Insurance Company of Sacramento—in the hands of very nice competent people who seemed to be very friendly to Mr. Newport and perfectly [222] willing to loan him $400,000 and before we left, I got the idea they would have loaned him $425,000, possibly, but as a part of the condition precedent, they wanted this affair taken out of the Bankruptcy Court.

Q. In other words, it would be a loan available only to the reorganized corporation and not to the Trustee in bankruptcy? A. That is correct.

Q. And also it would include this 6 acres?

A. Yes, and he deprecated somewhat our selling this 6 acres. I couldn't tell whether it was a matter of great interest to him or whether he had been promoted into that or what, but he seemed to think that perhaps we were selling a little too cheap. He didn't state so very emphatically. By the way, I have my own ideas of how this can be refinanced, based on this sale. I will be very glad to tell Your Honor if it is a matter of interest to anybody.

The Referee: I have been hearing that so long, that I would like to see something actually happen. I have been hearing refinancing ever since I got this case two years ago. We just need to sell some property. Quit sitting on your hands and get around and sell some. Isn't it true that anything in the world you have to sell is worth what you can get for it?

(Testimony of H. F. Metcalf)

The Witness: It is often worth more than you can get [223] for it.

The Referee: Not being obliged to sell on a fair, open market, isn't it worth what the other man is willing to pay?

The Witness: Yes, that is the classical definition, I believe, Your Honor.

Mr. Cahill: I have no further questions.

Mr. Lynch: No questions.

J. B. GRIBBLE,

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Cahill:

Q. Mr. Gribble, you are the auditor for the Trustee in this matter? A. Yes, sir.

Q. Are you familiar with the records of the income from the oil property? A. Yes, sir.

Q. Are you able to advise the Court as to the present income, that is the Trustee's income from the 6 acre parcel? A. Yes, sir.

Q. What is it, please? [224]

A. Which month do you want, Mr. Cahill? I have it by years for 1944, 1945, 1946, and for the 10 months of 1947.

Q. Will you give us the 10 months of 1947?

A. The 35 per cent royalty accruing to the Trustee for the 10 months of 1947 was $21,133.18.

Q. Apparently, just a trifle over $25,000 a year at the present time?

A. It will be just slightly over that, yes, sir.

(Testimony of J. B. Gribble)

Q. Is that higher or lower than the year 1946?

A. That is higher.

Q. And why is it higher?

A. There have been two price increases this year.

Q. And this is only from the 6 acre parcel?

A. Yes, sir.

Mr. Lynch: I can't see the materiality of this. After all we are retaining that. Why waste the time of going into that? And how much are we retaining for the oil; we still retain it.

The Referee: It migh be eliminated. How many years would it take us to pay off the bank The bank has a claim here, I understand, for $320,000.

What was it in 1946?

The Witness: The 35 per cent royalty was $20,032.84. For 1945, the 35 per cent royalty was $20,530.32.

Q. Mr. Gribble, in reference to the proposed sale [225] to Procter & Gamble at a price of $198,000, less the deduction to be made for the removal of the tank, have you made any calculation as to what income tax on that sale would be chargeable against the estate?

A. Yes, sir.

Q. Will you state it, please?

A. After making the deduction for the cost of removal of the equipment as testified to by Mr. Metcalf, which was $20,378, allowing for escrow fees, title policy, et cetera, the tax would be, the way I estimate it, $20,761.18.

The Referee: That would be a tax upon the increased value.

The Witness: It is a tax over our original cost.

Mr. Cahill: I have no further questions.

Mr. Lynch: I have no questions.

Mr. Iverson: No questions.

H. G. NEWPORT,

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Cahill:

Q. What is your name?

A. H. G. Newport. [226]

Q. You are the president of the bankrupt corporation?

A. I am.

Q. What is your business or occupation?

A. Real estate broker.

Q. How long have you been such a broker?

A. Over 40 years.

Q. And in California? A. Yes.

Q. You have engaged in the purchase and sale of real estate on your own behalf during that period?

A. Yes.

Q. Have you also engaged actively in selling lands for others? A. To some extent, yes.

Q. And have you also engaged in the appraisal of lands? A. Yes.

Q. Have you appraised heretofore in the District Courts of the United States? A. Yes.

Q. In the Superior Court of the State of California?

A. Yes.

Q. Are you acting as appraiser now for the Federal Court in any manner? A. I am. [227]

Q. Where? A. In Mr. Laugharn's court.

Q. You are of course acquainted with the 6 acre parcel of land? A. I am.

Q. Did you purchase that parcel on behalf and for your company? A. I did.

(Testimony of H. G. Newport)

Q. When? A. On February 13, 1913.

Q. You have been familiar with the parcel of land at all times since then? A. I have.

Q. Are you familiar, Mr. Newport, with the present development of Long Beach Harbor? A. I am.

Q. Have you had occasion in recent years—I will limit that to not exceeding the last 36 months—to making a study of the plans of the City of Long Beach for the development of its harbor? A. I have.

Q. Are you familiar with the sales of property that have been made in Long Beach Harbor area, particularly in reference to waterfront property? A. I am.

Q. Over what period? [228] A. 30 years.

Q. Do you have an opinion as to the value of the surface rights of the 6 acre parcel? A. I do.

Q. Will you state the value in your opinion?

A. The fair value of the 6 acres is $391,000.

Q. Directing your attention to another matter, Mr. Newport, namely the matter of the proposed financing, will you state to the Court whether you have negotiated a loan to be made to the organized corporation?

A. I have.

Q. And with whom?

A. With the life insurance company.

Q. Will you state its full and correct name?

A. California Western States Life, Sacramento, California.

Q. And does that loan contemplate to cover the first lien upon all of the assets of the corporation now in the hands of the Trustee in bankruptcy? A. It does.

Q. Including this 6 acre parcel? A. It does.

(Testimony of H. G. Newport)

Q. Have you received any communication from that company in reference to the proposed sale to Procter & Gamble as to their willingness or unwillingness to proceed with the loan in the event that such a sale is made? [229]

A. I have.

Q. Do you have that communication with you?

A. I have the communication here.

The Referee: How much do they propose to lend you, Mr. Newport? How much have they agreed, if they have agreed to lend you?

The Witness: Let me explain, Your Honor. Along in December last year I contacted Mr. Johnson who appeared before you in court. He was the chief appraiser for the life insurance company. The matter was taken up with Mr. Johnson at which time the matter was discussed and Mr. Wright, who was the vice president of the company, together with Mr. Bryer, drove over the various properties and approved the loan at that time for $400,000. The matter was discussed when it came up relative to a question as to whether our taxes with the government had been settled. At that time they were under negotiations and Mr. Wright told me—he said, "Until you get that out of the road, Mr. Newport, there is no use talking to us as we want to settle that definitely." I think, along in January, there was a part settlement made and I think the matter was completely settled along either in April or May. That was the No. 1 proposition on the road. The matter was then discussed and I thing Mr. Metcalf went over to the bank and there seemed to be some sort of an agreement with the bank that they would accept $250,000. [230]

The Referee: Let me cite this to you. I have heard all that a million times from you and from Mr. Metcalf.

(Testimony of H. G. Newport)

What I want to know now is what amount of money did the California Western Life Insurance Company agree to lend you on these properties. Mr. Metcalf, you and I have discussed the bank's attitude in not reducing their loan several times. I am familiar with that. What I want to know now is what can you borrow from this California Insurance Company?

The Witness: I would say a minimum of $400,000.

The Referee: Does that clear you out with the bank, out of the bankruptcy court?

The Witness: It will do this, Your Honor.

The Referee: You can answer that yes or no, and explain later.

The Witness: I think it would.

The Referee: You owe the bank $320,000.

The Witness: They have agreed to accept $310,000.

Mr. Iverson: Who agreed to that?

The Witness: I don't know; I am just taking Mr. Metcalf's word.

Mr. Metcalf: Mr. Craig, the executive vice president of the Security Bank agreed to accept $310,000.

Mr. Lynch: That is correct, $310,000, plus the interest.

Mr. Metcalf: Plus interest that might accrue until it [231] was paid.

The Witness: Then the matter was taken up with the Bank of America and they agreed to accept $51,000.

The Referee: Bank of America, $51,000; that makes it $361,000 altogether then?

Mr. Lynch: They have an unsecured claim.

Mr. Iverson: We have an unsecured claim of $64,000.

(Testimony of H. G. Newport)

Mr. Lynch: $85,000 administration expenses accrued to date. That does not take into consideration such amount as may be allowed.

The Referee: That is $507,000.

Mr. Iverson: The Bank of America has a mortgage on 37 acres up in the Verdugo Mountains. That was taken under permission of the Court and then before the 5-year period ran out permission was given to renew it by another one. Taxes and advances on top of that with interest and so on bring that obligation up to $90,000. Because, it runs back many years. We refrained from foreclosing because we didn't want to precipitate any trouble here. The bank is willing to take $51,000 and forget the rest of it.

Mr. Lynch: You mean withdraw its unsecured claim?

Mr. Iverson: No, not the unsecured claim.

Mr. Lynch: There are nearly $200,000 worth of unsecured claims. Obviously, if you are going to settle, you will have to settle with the unsecured as well as the secured, to make some compromise. [232]

Mr. Nelson: I don't exactly know what the unsecured claims amount to. My impression is that they are altogether over $200,00. Now, Mr. Newport's idea is that if he should have funds to pay off the liens, actual liens on the property, expenses of administration, that he could then make a compromise or settlement of the unsecured claims on the basis of a deferred liability. He wouldn't to evade the liability. It would be in the nature of a reorganization. You will have to divert the procedure. The unsecured creditors have waited a long time and they are entitled to their money.

* * * * * * * * *

(Testimony of H. G. Newport)

Q. By Mr. Cahill: Mr. Newport, this $400,000 loan, did that contemplate a plan of reorganization through the court? A. Yes, sir.

Q. Which would be under Chapter 10 of the National Bankruptcy Act? A. Yes.

Q. And under such proposed plan, the unsecured creditors would be given either a junior security or a preferred stock or something of that kind; is that the plan?

A. That is the plan. In addition to that there is available by one of the contractors additional sums of $75,000 credits. In other words, what we need to do with [233] the Newport picture, is to get it operating and I think by subdividing some of these properties we would be in a position to pay these creditors all off in a year and half or two years.

Q. Let me ask you this. Part of the plan of the life insurance company in making this loan is not only to get this matter out of bankruptcy but also to make it a going concern? A. Yes.

Q. And as a going concern it regarded the necessity of having certain working capital in the sum of $75,000?

A. That is correct.

Q. And the purpose of that $75,000 was to place under subdivision the land in the Verdugo Woodlands which has been held for a prospect of subdivision for so long? A. That is correct.

Q. And did you request Lawrence M. Cahill, Attorney at Law to negotiate with his clients, the Haddock Construction Company, Limited, Pasadena, for $75,000 credit whereby you would in effect or rather the reorganized corporation would have available that sum of money as working capital in reference to this proposed new subdivision? A. I did.

(Testimony of H. G. Newport)

Q. And up to the time and about the time this proposed sale to Procter & Gamble came into this court, had you completed those negotiations with Mr. Haddock? [234] A. I had.

Q. And was it in the process, when this offer came in, of drawing papers in reference to that? A. It was.

Mr. Cahill: That is all.

Mr. Lynch: I have no questions.

Cross-Examination

By Mr. Iverson:

Q. Mr. Newport, you have set the fair market value of this property at $391,000. That is approximately $65,000 an acre? A. Approximately that.

Q. Can you state to the Court in your experience has there ever been similar property in the Los Angeles Harbor area sold for that amount of money?

A. There have been very few sales of property in the Long Beach Harbor area. It was all comparable. A lot of sales have been made—like going back to the Model T Ford a good many years ago—

Q. Will you answer the question, please? Has there ever been a property sold in Los Angeles Harbor for $65,000 an acre?

A. I would break the sale down. In other words in the Spreckels property—

Q. Will you answer the question yes or no? [235]

A. Yes, I think so. I have a right to break the sale down; in other words, it is perfectly legitimate.

Q. How many acres were there in the Spreckels property? A. I think 37 acres.

(Testimony of H. G. Newport)

Q. That sold for $27,476 an acre, isn't that right?

A. I would say somewhere in the neighborhood of that figure.

Q. Going to this refinancing, as a matter of fact, Mr. Newport, in 1935, 12 years ago, when the Security-First National Bank was before Judge McCormick, asking for permission to foreclose on your assets, you at that time stated to Judge McCormick that you had a refinance program, did you not?

A. We thought we did with the R. F. C.

Q. And you so stated to Judge McCormick?

A. I did.

Q. And in 1942 when this matter was before Referee Utley and there was a proposed sale of the San Fernando property, you stated then that you had a refinancing program?

A. Yes, at that time we were negotiating it.

Q. And you stated before Referee Utley that you had a refinancing program?

A. We stated the loan was being negotiated.

Q. And in 1944, before Referee Utley, when the Security Bank was again trying to foreclose, you stated to [236] Referee Utley that you had a refinancing program, didn't you?

A. I said we were negotiating one; I didn't state it.

Mr. Iverson: That is all.

Redirect Examination

By Mr. Cahill:

Q. Mr. Newport, in reference to the Spreckels property, how many acres of that property is not water-front property? A. In the neighborhood of 26 acres.

Q. Has no frontage at all? A. That is correct.

(Testimony of H. G. Newport)

Q. And what, in your opinion, is the 26 acres worth?

A. The 26 acres running back 500 feet is worth $1.50 a square foot. I can give you a little history, if you wish.

Q. No, I don't want a history. What, in your opinion, are the 26 acres which is not waterfront property worth?

A. I wouldn't put it at more than 50 cents a square foot.

Q. $1 a square foot for the frontage?

A. That is correct. [237]

Mr. Cahill: That is all.

Recross-Examination

By Mr. Lynch:

Q. Mr. Newport, you say it is not waterfront property; you mean you arbitrarily are taking 500 feet as being what you consider waterfront property and the balance you say is not waterfront property, is that right?

A. That is right.

Q. You are of the opinion that 500 feet of the property is waterfront property and the balance of it you consider is not waterfront property?

A. That is right.

Q. As a matter of fact, it is all contiguous property, one piece property? A. I guess so.

Redirect Examination

By Mr. Cahill:

Q. As a matter of fact, Mr. Newport, it is three separate parcels, is it not, two parcels separated by the railroad right-of-way?

A. That is correct.

Mr. Cahill: No further questions.

I have nothing further to present, Your Honor.

Mr. Lynch: The Trustee has nothing further. [238]

Mr. Iverson: I have a little evidence to present.

R. T. ADAMS,

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Iverson:

Q. State your name. A. R. T. Adams.

Q. What is your occupation?

A. Assistant vice president of the Security-First National Bank.

Q. In your position have you had charge of the F. P. Newport loan in the Security-First National Bank?

A. I have since May of 1933.

Q. Will you state to the Court the amount that is still due and unpaid by the F. P. Newport Corporation to the Security-First National Bank?

A. As of November 20, 1947—and I believe it is the same figure now—$320,222.85.

Q. Can you state how much has been received by the bank since January 3, 1946, on account of this obligation, on account of the principal?

A. We have received in the period between January 1, 1946, and November 20, 1947, $83,484.58. [239]

Q. How much of that did you receive from the oil income on the property? A. $37,253.38.

Q. And how much did you receive from liquidation of assets? A. $46,232.

Mr. Iverson: That is all.

Cross-Examination

By Mr. Nelson:

Q. Mr. Adams, was that $83,000 realized on the principal? A. Yes.

(Testimony of R. T. Adams)

Q. And in addition to that, interest was paid, was it not? A. That is correct.

Q. The bankrupt corporation also paid taxes on the encumbered property? A. That is correct.

Q. And it also paid an income tax settlement with the Government during this year, during the early part of the year, did it not, on a compromised basis?

A. An income tax settlement was made with the Government; I have forgotten the date.

Q. Wasn't the settlement something in the neighborhood of $16,000? [240]

A. It wasn't that much, I can assure you of that. I think it was $52,000. That figure sticks in my memory.

Mr. Newport: $56,000.

The Witness: The point is, Mr. Nelson, that the oil income has been used to pay income taxes and oil taxes and no income has accrued out of the real estate sales. Only $46,000 has come from real estate sales.

The Referee: Since this case was filed?

The Witness: During this period from January 1 of 1946. I haven't got the figures accurately, but I would guess that there has only been a total of about $200,000 of liquidation that has come from real estate sales. The rest of it and the carrying costs have all come from the oil that was fortunately discovered under this property.

By Mr. Nelson: Q. You have been supplied monthly with oil returns, haven't you, Universal Consolidated Oil Company returns?

A. We get both a weekly return from Mr. Carrey who employs Shephard Pendleton, Limited and then we also get a monthly return from him and from the oil company, yes, sir.

(Testimony of R. T. Adams)

Q. And the amount of oil that is being produced on those wells is diminishing at all times, isn't it?

A. It has been steadily going down as is natural when water comes into a well and as the supply of oil is gradually depleted. [241]

Cross-Examination

By Mr. Cahill:

Q. Strangely, the oil income has been increasing?

A. The oil income has been increasing recently because of an increase in price, but the production of oil is down per barrel.

Mr. Cahill: That is right. Thank you, Mr. Haddock.

Redirect Examination

By Mr. Iverson:

Q. You don't feel now that the bank is in any jeopardy; that is, the loan isn't in any jeopardy with respect to the sufficiency of the security for it?

A. I wouldn't go that far. If we are asked to continue to speculate for the benefit of the unsecured creditors to a point definitely, the present boom will pass us by and what you can do with unproductive real estate is anybody's guess. This company got into bankruptcy in the beginning because they didn't have income enough to pay their carrying costs and if this thing goes far enough the same thing can recur again. If we can liquidate today without doubt we can get our money and the unsecured creditors perhaps get something. But that can change any minute.

(This concludes all the testimony in the case. Argument that ensued left out by request of counsel.)

[Endorsed]: Filed Mar. 1, 1948. Edmund L. Smith, Clerk. [242]

[Title of District Court and Cause]

Before the Honorable Hugh L. Dickson,
Referee in Bankruptcy

A PARTIAL TRANSCRIPT IN RE JOSEPH SATTLER COMMISSION ON SALE OF REAL PROPERTY

Los Angeles, California, December 1, 1947

* * * * * * * * *

Mr. Lynch: I am not sure what the answer is, but Mr. Metcalf has not made any agreement or arrangement with anyone for the payment of any commission. But, there has been some discussion about the payment of a commission and I think the Court talked to the man.

The Referee: I talked to a gentleman back there and told him that if he contacted a buyer, I would see that he got compensation for his time and his license as a broker, and the compensation I told him should not exceed $5,000, regardless of what the price was. I told him, regardless of the price, that I would see that he got compensated for his producing a purchaser, not to exceed $5,000.

Mr. Lynch: Do I understand that this gentleman did produce this person here?

The Referee: He contacted the Proctor and Gamble people.

Proctor and Gamble Representative: He was the finder and we have handled the negotiations from that point.

Mr. Cahill: When did that compensation take place?

The Referee: It was in 1946 when the first Proctor and Gamble offer came in. As I recall, the Proctor and Gamble people in 1946 made the first offer and then the Los Angeles Soap Company made a higher offer. [2]

Mr. Lynch: I think that is correct.

Mr. Metcalf: I don't recall that Proctor and Gamble ever made an offer at that time, when they were contacted and expressed some interest, Your Honor.

The Referee: It was something like $80,000. Anyway, I know later, this gentleman went to the Southern Pacific man and talked to them about it and I think he talked to you, Mr. Metcalf.

Mr. Metcalf: This man has never talked to me about this deal.

Mr. Lynch: May we have your card for the reporter here? (Addressing the broker, Mr. Sattler)

The Referee: He has produced this buyer, if it be a buyer, through his efforts.

Mr. Metcalf: I would like to comment on the fact that those commissions are being paid. The only possible way I consider that they can sell property in La Crescenta and Verdugo Woodlands is to employ brokers. And, I can do better work through a broker than I can direct.

Mr. Lynch: (Reading from a card handed to him by Mr. Sattler)

"Joseph Sattler, 218, H. W. Hellman Building, Los Angeles, California—Permit No. 11732, License Number."

[Endorsed]: Filed Mar. 29, 1948. Edmund L. Smith, Clerk. [3]

[Title of District Court and Cause]

Honorable Charles C. Cavanah, Judge Presiding

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Place: Los Angeles, California.
Date: April 26, 1948.

Appearances:

For Petitioners Dorothy Day, et al.: L. M. Cahill, Esquire.

For Trustee, H. F. Metcalf: Allen T. Lynch, Esquire.

For Procter & Gamble Mfg. Company: O'Melveny & Myers, by Richard C. Bergen, Esquire, Edward C. Freutel, Jr., Esquire, T. O. McCraney, Esquire.

For B. B. Robinson, Mortimer A. Kline, Esquire.

Los Angeles, California, Monday, April 26, 1948.
10:00 A. M.

The Clerk: 25308-M. In re: F. P. Newport Corporation, Ltd., bankrupt.

Mr. Lynch: Ready for the trustee.

The Court: You may proceed.

Mr. Cahill: I am informed that certain negotiations are under way as to which I am not fully informed, but it appears if consummated they would be to the benefit of the estate and creditors.

I am informed this morning, though, apparently, so far as I know at this time, that all parties are desirous that the matter on your Honor's calendar be continued for a period of two weeks.

The Court: I cannot do that. I am leaving here tomorrow night, and I will have to turn this matter over then to another judge. I have given you six months.

The trustee indicated to me he would get another bid by that time, other than presented to the referee. I come here and I find another request for continuance. Negotiations are going on, you say.

I do not want to go away without ruling on this matter that is before me, one way or the other, this morning. Otherwise, another judge will have to start all over again. I feel I have to rule one way or the other. [2]

I gave you, I think, six weeks or something like that, because the trustee felt he would have negotiations completed. Now, I come here and there is another headache. We will never get anywhere that way, in completing a lawsuit.

Mr. Lynch: If the Court please, so far as the trustee is concerned, I wish to advise that the trustee has not been able to obtain any better bid. There are now negotiatios in progress. Mr. Mortimer Kline represents a party who is interested, and particularly asked for this continuance. The Procter & Gamble people and the Security-First National Bank people have agreed to the continuance.

The Court: You agreed to a continuance on both sides—

Mr. Lynch: Mr. Kline is here. I don't know whether he has any—

Mr. Kline: Would you care to hear me for a moment?

The Court: Yes.

Mr. Kline: There is presently before Your Honor the question of confirming the sale of a six-acre parcel, which involves certain surface rights.

The offer that has been made on behalf of the Procter & Gamble Company states that the sale, to-wit, of this

surface, will convey all mineral rights and be subject only to an existing oil and gas lease. This oil and gas lease has a fixed term to run.

On this six acres there are six producing wells, the [3] income from which inures to the interest of this bankrupt estate. If this sale is consummated to the Procter & Gamble Company, the sale of the surface rights, which is the basic interest that it is acquiring, it will have the effect, in my opinion—and I think it is shared by certain of the others, including those who are representing Procter & Gamble—it would have the effect of greatly destroying the value of the oil rights, for the simple reason, if Procter & Gamble for the purchase price of the surface rights can obtain the reversionary mineral rights without any consideration therefor, so at the termination of the existing lease, whether that be day after tomorrow or five years or ten years, or the term of the lease, will have the effect of adding to their value many, many hundreds of thousands of dollars, and taking away from the bankrupt estate the ability to obtain a higher price for the mineral rights.

I represent a responsible purchaser, who is interested in acquiring the mineral rights, Your Honor, and who will pay a substantial consideration therefor, provided he can obtain the mineral rights and the right to produce the oil, which is within that property, for as long a period of time as the oil can be produced therefrom on an economical basis.

Procter & Gamble, through its representative, will tell you here today they are interested solely in surface rights and not in mineral rights. They only wish this reversionary [4] mineral right in order that they might be protected in their surface rights. We have been talking with

them, with the idea in mind of visting the property and sitting around a table, and that we could work out an arrangement whereby they can enjoy their full surface rights, and at the same time give up any mineral interests they might acquire under this purchase and thus, if the mineral rights are offered for sale, unrestricted, except to the extent that an agreement is made with respect to the surface use, the mineral rights will bring a much greater price in this court.

I might say that if such an agreement cannot be reached or if this Court sells the property to Procter and Gamble with this reversionary mineral right, the price which any responsible purchaser would pay for these mineral rights would be a fraction only of that which can be obtained if the full mineral rights can be granted.

We just came into this matter within the last several days, and I can assure Your Honor it is not with the idea of a delay or taking up this Court's time that we respectfully ask, in the interest of the bankrupt estate, as well as in the interest of my client who wishes to purchase and bid for this property, that the matter be delayed a period of two weeks, during which time we can definitely crystalize our views and will make a definite offer to Your Honor.

The Court: Is there anything further? [5]

Mr. Bergen: On behalf of Procter & Gamble Company, we agreed we would not object to this continuance, if there is a bona fide interest in this mineral right, and if anything reasonable can be worked out so that we can still get what we want, namely, the surface uncluttered by oil wells and like matters at the time we thought we were going to get them. We are perfectly happy to nego-

tiate to that end. We will do that whether or not this is confirmed this morning.

If Your Honor feels that he must, nevertheless, proceed, we will still be perfectly happy to sit down with the appropriate parties to try to work out anything that is fair.

The Court: This matter before the Court now on review of a sale, confirmed by the Referee, of $198,000.00, had a hearing. Evidence was taken. The matter was presented to the Court and the trustee came in and asked that the Court give him further time, that he had some faith in the fact that he could receive a better bid than $198,000.00.

I granted that request. I think that was some five or six weeks ago, or more than that. I fixed this date.

Now we come in here and we are confronted with the same atmosphere as then. We are in doubt whether the bid will be made or for how much, or whether it will be more than the bid I am to review this morning, or the Referee. It is the same situation.

Of course, all the parties agree to keep continuing this, [6] and you will never bring an end to the rights of people involved here.

Now, I think the Court has been fair with you and given you plenty of time and granted your requests. Now I am confronted with another request, that if certain things happen we will consider another bid. It is the same situation I had before me before.

The matter was presented to me and left open for that one purpose, and that one purpose alone, for me to consider. I feel I have to rule on this matter one way or another, either reverse this Referee's decision and confirm the sale, or not confirm it.

You come here and keep asking for continuances. I don't think that is fair to the Court, gentlemen. I have granted everything you have requested so far, and given you time to take care of it. Objections were made here by the creditors to confirming this sale. I took the review in this court. I heard your evidence on it. That is the status of the record up to this time.

The trustee went on the stand and said he had faith in receiving another bid. I think he said there was probably one for $500,000.00, and probably one for $700,000.00. I think those are the figures he related here. He had some faith in it, by reason of I don't know what. Anyway, he had it in his mind. I granted time to see if he could get a better bid than [7] $198,000.00, the bid before me to review, the sale the Referee confirmed.

I am leaving tomorrow night, and I have to leave. If I grant your continuance here, and a new judge comes in, he will have to go over what I have done and hear the evidence and start all over again. I have been handling this matter, I think, for six weeks.

Mr. Lynch: Approximately six weeks ago, Your Honor.

The Court: That is what my recollection is. I granted the request for all the parties. I am here for another request, a request for continuance, and to pass it over to another judge and let him retry it. That is not the way to help justice, gentlemen.

When you are given full opportunity to do business, try to do it and let the Court know you can or cannot.

Mr. Lynch: I appreciate the Court's liberality in this matter very much. The Court has been very considerate of the trustee.

I may say, so far as the trustee in bankruptcy is concerned, his interest is as a trustee for the benefit of all the creditors. He is trying to do his level best that he can do to get the ultimate out of the property for the benefit of those interested in the estate.

One of the problems that has always confronted us in this particular estate is the matter of liability for income tax [8] in the event of a sale.

Mr. Metcalf hands me this morning a telegram from Paul Ziffern, who was in Washington and took up with the Treasury Department the question of whether or not the sale of all the property would be considered a sale in the ordinary course of business, and subject to tax, and whether it would be considered purely a liquidation sale.

This wire is addressed to Mr. Metcalf and received by him this morning. It says:

> "Am in process of trying to secure new Treasury ruling. Cannot hope for any official statement of position for at least another week. Would it be possible to postpone action on proposed sale awaiting possible Treasury action, since sale might radically change picture for prospective purchasers of entire assets? Will contact you tomorrow. Paul Ziffern."

Mr. Cahill: Your Honor, will you entertain a motion to hear the trustee at this time?

The Court: He has not the bid. He is in hopes of getting one, if we keep putting it off. That is the report.

Mr. Cahill: There is another aspect to it. One of the very serious objections that the creditors had to this sale was confirmed by the Referee, and that was the very nature of the sale, which would tend to reduce sharply the value of the estate in this, the unconveyed and unsold mineral rights. [9] They would be placed in jeopardy, as to their full recovery.

As I understand, Your Honor is now informed, or prepared to receive evidence by the trustee to show there is a proposed purchaser for the mineral rights at this time; the client represented by Mr. Kline. If that can be consummated, and he indicates on behalf of his client it can be apparently through the cooperation of the proposed buyer, Procter & Gamble, but if those two things can be coordinated—apparently there is a belief on the part of some that they can; I am not at all advised in the matter —the estate would greatly benefit.

I would like very much to have an opportunity to have the trustee, who apparently is fully informed, convey the exact information to Your Honor.

The Court: You are stating what he will testify?

Mr. Cahill: No, I am not, I haven't talked to Mr. Metcalf, the trustee.

The Court: Call him, then.

Mr. Cahill: I had only a few brief words as counsel.

H. F. METCALF,

a witness called by and on behalf of certain petitioners, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Will you state your name, please?

The Witness: H. F. Metcalf. [10]

By Mr. Cahill:

Q. Mr. Metcalf, you are the trustee in bankruptcy in this matter? A. Yes, sir.

Q. You have heretofore testified in this court in this proceeding? A. Yes, sir.

Q. In this particular proceeding before us this morning. Will you relate briefly to the Court what has transpired since the last hearing before this Court in this matter, which you think would indicate that the estate might be benefited by any new matters that have developed?

A. When the Court so kindly gave me five weeks more, I went to work. We have developed at the present time about five possible buyers, either for the oil or the nine acres, or for the entire estate.

Two or three of the contacts I made were interested in capital gain only and would not buy other than the entire assets. I think probably a deal could be worked out with any one of them.

But, Your Honor, here is the blind alley I get into; now, I had a tentative offer the other day that could have paid—all for the oil only under the nine acres—that would have paid all of the debts of the estate except some of the unsecured creditors, and would leave a very considerable

(Testimony of H. F. Metcalf)

amount [11] of the estate intact; way over enough to pay them.

But, Your Honor, I run into these confiscatory taxes—if I use the proper word, maybe not. That is what it amounts to. The taxes, I am advised by my auditor, amount to about 42 per cent, and it leaves pretty nearly a hopeless situation.

Now, Thursday one of the men who is attempting to buy, Arthur Newfield by name, who has a client who is attempting to buy the estate or some very considerable part of it—and I am sure means business—telephoned me from Beverly that Paul Ziffern, of the law firm of Swarts, Tannenbaum & Ziffern, that he was going to Washington that night—he was flying—and he was a former employee of that department in Washington that handles these things and would be very glad indeed to take up tentatively the matter of whether or not this estate might be placed in some other category, such as liquidating category, wherein they would be subject to only normal or very light taxes.

I told him that I couldn't contract with him for any payment without the Court's order. He said he would be glad to go without any.

He reached Washington Friday morning and he contacted these people Friday and sent me this telegram Saturday.

Your Honor, I am not here asking any favors of your Honor. You were very kind to give me the time you did, and it was used profitably. I couldn't work out a deal. [12]

Now I have a list in my pocket of people. All of them have expressed a very active interest in this estate, either

(Testimony of H. F. Metcalf)

for the oil and the acreage under which the oil is situated, or for the entire assets of the estate. Among them is an attorney named Stanley, and an attorney named George Rayboth who claims to represent people who have money and are eager to buy, and Mr. Arthur Newfield.

I contacted a firm in New York, who I was led to believe would loan us the money, which is the ideal way to close up this estate. But Masden & Company of New York sent a man out named Kaplan, out to see me. He said they were not interested in loans, but would buy the entire assets of the estate.

If Your Honor please, I am going to be careful about whatever you order. The sale, if it is made to Procter & Gamble, under proper conditions, might be a good sale. I don't know.

Q. Mr. Metcalf, I direct your attention to the statement made to the Court by Mr. Kline. You heard the statement made by him? A. Yes, I did.

Q. Were you negotiating with his client for the sale of the oil rights only?

A. I believe that is true. I have had very little dealing with Mr. Kline. He has been dealing with either Mr. Newport or myself or you. I am getting a little confused, Mr. Attorney. I have got six or eight people; I have been [13] working on this definitely. I have used the phones incessantly, trying to dig up a purchaser who has the money and is willing to deal.

Q. You remain of the opinion, Mr. Metcalf, as you testified the last time you were here, that the present proposed sale to Procter & Gamble does endanger the recoverable oil?

A. It would do this: You could still sell the oil rights. I don't think it would spoil their salability, except that

(Testimony of H. F. Metcalf)

it would probably necessitate a lower price. I don't think there is any question about that. How much, I don't know. I tried to find that out, but people are evasive on that; I don't know.

Q. It will be less?

A. It might be that a proper deal could be worked out with Procter & Gamble, wherein they would permit certain things. That is a new idea to me. I just got that this morning from Mr. Bergen.

Q. Let me direct your attention to that. You heard the thought expressed there by Mr. Kline that there are negotiations under way between himself and his client and Procter & Gamble? A. That is correct.

Q. Do you believe that would be advantageous to the estate? A. Yes, I do. [14]

Q. Because you so believe, do you recommend to the Court that the two weeks requested continuance of this matter be granted?

A. The Court has been very nice to me, and I am very loath to ask any further favors. I do believe this: if that added time were given, it would enable us perhaps to make a dignified exit on the whole thing. Whether two weeks is sufficient or not, I don't know. I don't know, Mr. Counsel; I don't know.

I am getting a little frightened about the way time passes in these things. We are doing everything the hard way and it takes time, plenty of time; plenty.

How rapidly Washington would act on this, I don't know. He says a week.

The Court: Who can tell?

The Witness: No one can tell. If we got action out of them in a week, it would be very fine.

(Testimony of H. F. Metcalf)

The Court: I have heard that so often, I am convinced that is somewhat ambiguous. That statement to me is ambiguous.

They have not the time, they are busy. They have other matters.

The Witness: I talked to the Federal attorney.

Mr. McCraney: I have a sugestion, Your Honor. Fundamentally, we are not really thinking this morning in terms of other deals. We are talking in terms of the question of [15] whether Your Honor should reverse the finding of the Referee or should uphold it. At the time we last discussed this, I spoke on behalf of the Procter & Gamble and said we were interested in the surface rights to this property. We were not primarily interested in the oil rights, except insofar as we wanted to protect our surface use by avoiding the chance someone would come in and start drilling wells in the middle of the section of the usable property.

It seems to me one logical solution is for Your Honor to consider the question of confirmation this morning and leave open the possibility of our working out some equitable deal by which the bankrupt estate could be benefited by receiving some substantial part of the oil rights.

As Your Honor says, it will otherwise go on and on. I believe we are in a position to work out some kind of a deal that might benefit the trustee. That is the same position we took the last time.

Now, on what terms, we would have to leave the matter open. I don't quite know that. That would be one way to dispose of it today and still benefit the trustee and the bankrupt estate.

(Testimony of H. F. Metcalf)

I don't think there is any substantial evidence produced at this hearing or the other one that the price is so grossly inadequate Your Honor is required to set aside what is confirmed. [16]

The Court: What is left for the undisputed creditors, if the Court confirms—

Mr. Lynch: There is substantial estate left, Your Honor. What the value of that estate is, I am not prepared to say, and I don't think the trustee is.

Of course, this reserves to us all of the rights under the present Universal-Consolidated Oil Company lease. In addition to the oil income, we will have the surface rights of the entire amount of the three-acre parcel on Channel No. 3. Then we have considerable property in the Verdugo-Woodlands area and some scattered lots. What the total value of the remaining property is, after this sale, I am not prepared to say. Are you, Mr. Metcalf?

The Witness: I could make an accurate guess at it. I am pretty familiar with it, after 11 years.

Mr. McCraney: What is your opinion of the value of the remaining property, including the oil rights under the lease?

The Witness: Between $600,000.00 and $700,000.00.

This estate all depends on whether we go out and liquidate perforce under the hammer for what we can get or whether we can hold it for a dignified time and sell it to the right people. We have had instances of both in this estate, of throwing away property that should have been held a year and a half longer, or in some cases we have gotten a pretty fair price for our stuff. [17]

The Court: Do you really feel at this time this bid of $198,000.00 is inadequate?

(Testimony of H. F. Metcalf)

The Witness: No, I don't. I think, if that bid were properly safeguarded—and these gentlemen have shown pretty active feeling in that regard—I think if the oil—and I don't see why, if Procter & Gamble mean what they say—and I feel sure they do—that some proposition couldn't be worked out with them to protect the extra oil rights, whatever they might be, in the future. I don't know. I can't look 15 years ahead.

The Court: I think I was told last time that oil was going up 5 cents a barrel, since last December. I think that was the testimony.

The Witness: Definitely.

The Court: It is going up?

The Witness: It is likely to go up again.

The Court: Why slough it off under a bid like this?

Mr. Lynch: Our income month before last was a little over $6,000.00; last month something over $5,000.00. Yet actually the production has gone down.

The Witness: Our income has gone up, because of the increase in price.

The Court: Are you gentlemen through?

Mr. Cahill: I have no further questions.

Mr. Kline: I am still an outsider in the proceeding. [18] With respect to the suggestion made by counsel for Procter & Gamble, if any portion of this matter is left open for decision later, it would seem to me it would be a conditional approval and would have little weight, because they would be able to withdraw—

The Court: You are representing whom?

Mr. Kline: I am representing a prospective purchaser here in court, and would like to acquire the mineral rights.

(Testimony of H. F. Metcalf)

The Court: Who is the counsel representing the creditors that objected to this confirmation of the sale?

Mr. Lynch: That was Mr. Cahill.

Mr. Kline: The only point we have to make is, if there is going to be a continuance, from our standpoint, as a prospective purchaser, the entire matter should be put over, rather than a confirmation made conditionally.

The Court: Yes. So far as this testimony is concerned, if the Court confirms this sale that the Referee offered, of $198,000.00, after you deduct the items I have here, before the creditors get a look-in, the secured creditors would be left out on a limb.

There is a chance, as the trustee says here, if further time is given, maybe they can get more, but they do not know. It is like everything else.

The Witness: Secured creditors, Your Honor, can't lose.

The Court: You are here asking me now to pass upon the [19] primary question on this review, of whether or not this order of the Referee confirming this sale of $198,000.00 should be affirmed or reversed. I took the testimony here. The trustee came before us. He thought he could secure a better bid if he was given further time. I granted that time.

Now we are confronted with the same uncertain atmosphere. It is not the trustee's function. He has done all he could to try to get all he could out of this, on this testimony, for the creditors. They are the ones that are interested in this estate, whether they are secured or unsecured.

(Testimony of H. F. Metcalf)

It is the Court's duty to try to see that they get something, if possible. I am satisfied, gentlemen, this bid of $198,000.00 is inadequate. If I consider any interest of the creditors or the value of the property that has been described here to me, for me to keep continuing and trying to get bids, I do not think I should do it, particularly after we tried it once.

I think the only thing I can do, under this showing here, is to decline to confirm this bid, under the order of the sale of the Referee, and reverse it.

You can go down there and do your business. You will not be here in the court on any of it. If certain things happen, go down there and see if you can do some business; try it. That is the law. That is the procedure if we are ever going to get rid of it. Bring the matter to a head. We are [20] confronted here with the fact that if certain things happen in Washington maybe this would happen or that would happen. The uncertainty is the thing that bothers any judge in passing upon the rights of people.

You confront us with a cold proposition. Primarily, should this order of the Referee confirming this sale be confirmed or sent back under this petition for review? That is what you have before me. I am satisfied the trustee has done all he could and is trying to do all he can to get all he can out of this property for these creditors, these unsecured creditors.

If I confirm this sale here today of $198,000.00 and deduct certain items, of course you will not have anything to speak of for the unsecured creditors. I do not think

(Testimony of H. F. Metcalf)

there is one secured creditor here who says he is waiving anything.

There was some bank that argued to me, that was interested, they had gotten their principal, and they were willing to waive their interest if I would confirm the sale. That is the thought you put up to me six weeks ago or five weeks ago. The bank could afford to do that because they have gotten their money back.

The Witness Plus 1½ per cent interest; 1½ per cent interest.

The Court: The surface rights and oil rights of the other property makes it very uncertain and doubtful what is [21] going to be left for any creditor. On this showing before me I would not be justified in confirming this sale at all. I would not be justified in continuing here, trying to administer the sales of certain parts of this estate, in hopes we might get another bid if certain things happen. The "if" is always in the way.

That is your thought you were putting up to me this morning again, the same as you did five or six weeks ago; about five weeks ago. I am satisfied, in the interest of all concerned, I should not confirm this order of sale of the Referee for $198,000.00.

I have given you all a chance to see if you could do better, and we find you cannot. We are just where we were. I have to pass on it.

The order will be, the sale of the Referee is not confirmed. It is reversed.

Gentlemen, you will have to go there to transact your future business.

(Testimony of H. F. Metcalf)

The Witness: Thank you, Your Honor.

The Court: You are excused.

(Witness excused.)

The Court: I have helped you all I can. I feel I can't do anything else. If I continue this hearing and keep continuing it, another judge would have to go all over it and take the testimony I have taken, again. [22]

Go down below again and see what you can do with the Referee, if you want to. If you cannot conscientiously do it under this record, perhaps some other judge could.

The trustee, at the time the Referee made the order, if I remember, thought that was the best bid they could get. Since then he has believed he might get a better bid. Why not go there and administer it, and see if you can do it?

Mr. Metcalf: I will be glad to do it.

The Court: I cannot help you any more on the petition before me. Under the evidence, I am satisfied the objection should be sustained of the petition of the creditors here.

Mr. Metcalf: Your Honor, may I make a prediction? All the creditors will be paid in full in this estate.

The Court: Let us send it back and try it over again, and see if you can get another bid.

Mr. Metcalf: Fine.

The Court: I think that is better than to keep continuing it here, waiting for certain things to happen.

Mr. Metcalf: I still think we might work out a deal with Procter & Gamble; I think we might.

The Court: You tried it for the last five weeks.

Mr. Metcalf: No, I haven't been near them in the last five weeks. I have been trying to sell the estate or borrow money to liquidate the creditors or sell a portion of the estate. [23]

The Court: This question before me of confirming this particular sale, you were given time to see what you could do with that. That was all there was before me. I have nothing to do with the rest of the estate. In other words, if I did go into all those matters, I would be acting as a referee for the entire estate, instead of the property before me.

I will send this back to the Referee, and it is up to you and him whether you take two weeks or two years. That is your business, unless somebody else wants to try to get it reviewed again in some court. I feel I have done all I can on this petition, to review for the order of sale by the Referee. I don't feel that bid of $198,000.00 is adequate.

I will have to reverse this order of the Referee.

Mr. Lynch: I assume you will draw the necessary order, Mr. Cahill?

Mr. Cahill: Yes.

The Court: You still have your chance—

Mr. Cahill: Yes.

The Court: The question is what tribunal you should go before to do it. I feel I have done all I can under this.

[Endorsed]: Filed June 10, 1948. Edmund L. Smith, Clerk. [24]

[Title of District Court and Cause]

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, Thursday, March 11, 1948

Honorable Charles C. Cavanah, Judge Presiding

* * * * * * * * *

Los Angeles, California, Thursday, March 11, 1948
10:00 A. M.

The Court: You may call the case, Mr. Clerk.

The Clerk: In the Matter of F. P. Newport Corporation, Limited, a corporation, No. 25308-M.

Mr. Cahill: We are ready.

Mr. Nelson: We are ready.

Mr. Lynch: The trustee is ready.

Mr. McCraney: We are ready, your Honor.

The Court: You may proceed.

Mr. Lynch: If the court please, this matter is brought on by way of a motion made on behalf of the Trustee in Bankruptcy to affirm the order of the Referee and approving and confirming the sale of certain property to the Procter Gamble Company.

Actually, however, the burden of establishing any error on the part of the Referee is upon the reviewing parties and the motion was a mere formality in order to get the matter heard.

The Court: Do you represent the reviewing party?

Mr. Lynch: No. I represent the Trustee in Bankruptcy and in order to get it on the calendar I made a motion to affirm the order of the Referee.

The Court: Very well.

Mr. Cahill: May it please the court, I am Lawrence M. [4] Cahill. I am attorney for the Bankrupt in this matter and have been since lo these many 11 or 12 years during which this proceeding has been pending.

I am also attorney for certain unsecured creditors who joined with the Bankrupt and filed objections to the proposed sale and who, with the Bankrupt, had petitioned this court for a review of the order of the Referee confirming the sale.

I state to your Honor that at the time of the hearing before the Referee an unsecured creditor, the Bank of America, appeared by its counsel, Mr. Edmund Nelson, and moved to join in the written objections filed by myself on behalf of the bankrupt and the creditors whom I represent.

That motion was granted. Also at that time creditors, unsecured creditors represented by attorneys other than myself, filed other written objections. Those other creditors, a relatively small group as I recall, have not petitioned for a review. The creditors represented by myself having claims aggregating $80,419.46, have petitioned for a review with the bankrupt.

At this time the Bank of America appears through its counsel and offers to aid the bankrupt and the creditors represented by myself in the prosecution of this petition for a review; and at this time I move your Honor that Mr. Edmund Nelson be associated as counsel with myself in this proceeding [5]

The Court: He may do so.

Mr. Cahill: I will state to your Honor that since this matter was heard before the Referee for over quite a number of days in November—I think it started in November or December of last year, there has been, I

am informed. a very important development discovered by the trustee in bankruptcy in reference to this particular property.

I am informed that the trustee appears at this time voluntarily with the hope and the desire that he will be permitted to be sworn and testify in his capacity as trustee that he has discovered facts since the hearing before the Referee, that are of such a serious nature, in reference to the property of the estate, that he believes that that information should be before the court at this time.

I will state to your Honor that I have intended to call Mr. Metcalf to testify as to one fact discovered subsequent to the hearing and that was this. One of the conditions of this sale was that there might be a loss or a detriment to the estate as to the remaining recoverable oil values. When the matter closed and experts had testified that it was generally conceded that there were apparently large recoverable values the dollar and cent factor was not determined. We had no particular way to do it. But I have heard since that the trustee subsequently went abroad on the land and approached royalty buyers and he said: [6]

"If the surface rights are sold and we have our royalty left what will you pay for it?"

He made a discovery of two things. One I intended to call him on. The other I understand he wants to acquaint the the court with the facts himself.

The one that I wanted to call him on was that he discovered in hundreds of thousands of dollars just what that recoverable value apparently was—what royalty buyers were willing to offer, and from my viewpoint it was a factor so high in dollars and cents that I thought

if known to the court the very weight and amount of it would be a matter of serious concern to the court when it considered what is the fundamental question here on review.

There are several important questions but the fundamental question whether the condition of this sale imposed by the buyer that the mineral rights passed with the land and we retained only our interest under the present lease.

That condition was so detrimental, so dangerous to the estate that the sale should not be confirmed—certainly not with that condition and I thought that if the court knew in dollars and cents the apparent tremendous figure of what royalty buyers think are the recoverable values the court would give that question that I have just stated a very, very deep consideration.

So at this time, if your Honor please, I move that [7] we be allowed to call—I understand the trustee's counsel has no objection—Mr. Metcalf as trustee to testify as to these matters discovered since thie hearing.

The Court: You say there is no objection?

Mr. Lynch: If the court please, I think I should make clear the position of the trustee in this matter.

This bankruptcy proceeding has been pending since 1935. For a number of years the trustee has been actively endeavoring to sell this property among other properties. At the time of the submission of the offer by Procter & Gamble to purchase the property and at the time the trustee recommended the approval of that offer, it was the opinion of the trustee that that was the best offer that he would be able to obtain and certainly was the best offer for the property that he had been able to obtain up to that time.

Since the order confirming the sale was made the trustee informs me that certain people have come to him and suggested that they might be willing to pay considerably more for the property than was paid—than was offered by Procter & Gamble Company, including both the oil rights and the surface rights or the fee to the property.

Those tentative figures and discussion of figures ran up into several hundred thousand dollars more than this offer amounts to.

Now, the trustee in reality is the trustee. It is [8] not his purpose nor desire to force upon this estate a sale which is not in the best interests of the estate and the creditors. The order was made by the Referee at the time when certainly no better offer at that time was available. So, so far as the trustee is concerned we have no objection to the court taking such evidence as it may deem proper so that it can thoroughly understand what the situation is and whether the court is disposed to listen to evidence concerning matters that have arisen since the confirmation of the sale I am not prepared to say.

The Court: I think under the statement of counsel here, both of you, it would be the duty of the court to take evidence under the conditions that have arisen since that sale was confirmed by the Referee. It is a matter, as you state here, that may be of interest to all concerned, creditors as well as the bankrupt.

You say a condition has arisen where probably more money can be obtained on a sale of this property by reason of subsequent developments since the order of the Referee. If that is the case why shouldn't the court give you that opportunity rather than just arbitrarily say, "I will consider it only on the record that was before the Referee," and rule one way or the other?

This is an unusual situation for this kind of proceeding for this circumstance to develop, so it seems to [9] me there is no contest and I think it is my duty to hear any evidence that you may offer.

After all, the law contemplates that the property of the bankrupt shall be justly administered and all obtained out of it that is possible in order to pay the creditors and if there is any surplus to help the bankrupt. That is the primary purpose of the bankruptcy law and why shouldn't we be a little patient and see if we can obtain more for the sale of this property. You may proceed.

Mr. Cahill: Mr. Metcalf, will you come forward?

H. F. METCALF,

called as a witness by and on behalf of Petitioners, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: H. F. Metcalf.

Direct Examination

By Mr. Cahill:

Q. Mr. Metcalf, you are the trustee in bankruptcy in this matter? A. Yes, sir.

Q. And have been since, if I recall, the year 1937?

A. I think that is correct; yes, sir.

Q. And your business is that of a realtor?

A. Realtor.

Q. You are, I believe, one of the oldest established [10] real estate firms in Los Angeles?

A. I believe that is correct.

(Testimony of H. F. Metcalf)

Q. You have specialized for many, many years as a realtor in downtown and business real estate?

A. Yes, sir.

Q. As well as general real estate?

A. General real estate.

Q. You have been a trustee or receiver in this court on many, many occasions, have you not?

A. Yes, a great many.

Q. And on largely—primarily very, very large estates?

A. Most of them were very large.

Q. You are familiar, Mr. Metcalf, with the lands belonging to this estate that are located on Channel No. 3?

A. Yes, sir.

Q. And they are composed, are they not, of two parcels, one of six acres and one of three acres?

A. Yes, sir.

Q. And those two parcels are separated by a three-acre parcel owned by other persons?

A. That is correct.

Q. On the six-acre parcel as well as the three-acre parcel there are oil wells that are producing oil?

A. Yes, sir. [11]

Q. And they have since, oh, approximately 1938 or 1939—somewhere in there?

A. 1938, I think. They have produced over three million dollars worth of oil, your Honor.

The Court: Since 1938?

The Witness: Since 1938, yes, sir, from the nine acres, a gross amount to all parties.

Q. By Mr. Cahill: That three million dollars was gross, was it not?

A. Yes, gross to all parties. Our portion of that, your Honor, was 35 per cent, plus a bonus.

(Testimony of H. F. Metcalf)

Q. Mr. Metcalf, you have an auditor employed by yourself as trustee in this matter? A. Yes, sir.

Q. Mr. J. B. Gribble? A. Yes, sir.

Q. I assume that you do not carry around in your head and know exactly of your own knowledge the net royalty received by the trustee during those years?

A. Yes, I have. I have it in my pocket, Mr. Cahill. I have a summary on one page of the entire operation of this receivership and trusteeship for my full term, stating the amount of secured creditors at the beginning of the term and the amount we now owe the secured creditors. It is rather interesting, your Honor. I am not ashamed of it. [12]

Q. Mr. Metcalf, possibly all I can expect to do at this time is place before the court in this matter just an idea of what we have already received. I will state to you that in the sworn objections as filed in this matter, I set forth on Page 5 thereof an item which I obtained from Mr. Gribble as being the royalty which you have received and banked, and it was stated as $1,231,901.87 as of on or about the 12th of November, 1947. That is approximately correct, is it not?

A. I think undoubtedly that is correct, although my summary here does not show that. I asked to have a summary made, your Honor, showing the amount of indebtedness which I took over and the amount now due and the amount of recovery we have made from the sale of property.

There has been some question whether I was active enough in the sale of property. I wanted that set forth here. We have paid the secured creditors from $1,304,000 down to $322,000, and against that $322,000 there are

(Testimony of H. F. Metcalf)

creditors of 8 and 2 and some other amounts making a net owing to the secured creditors as of today of about $300,000 in lieu of $1,304,000—that was when we went in.

Q. Mr. Metcalf, I also stated in there and obtained the figures from your auditor, that as to this six-acre parcel of land which is involved this morning before this court, that of the total gross recovery made from that six-acre [13] parcel of $1,341,363.04, that your share actually received and banked by you from the six-acre parcel was $469,477.06. I that correct?

A. If Mr. Gribble said so it is undoubtedly correct. He is an excellent auditor.

Q. Now, Mr. Metcalf, at the hearing before the Referee on or about the 12th day of November, 1947 —well, let me state starting on the 13th day of November and being continued to the 24th and 26th of November, and the 1st of December, all in 1947, you appeared at that time, did you not, and gave certain testimony? A. Yes, sir.

Q. In reference to this proposed sale to Procter & Gamble? A. Yes, sir.

Q. And you had previously in the petitions which have been filed seeking an order to confirm the sale. recommended to the court the sale be made, did you not?

A. I did.

Q. Mr. Metcalf, will you state to the court whether subsequent to December 1st, 1947, that day being the last day of the hearing in this matter, any information or knowledge was received by you in reference to this sale and in reference to this property which now leads you

(Testimony of H. F. Metcalf)

to believe that you were mistaken in so recommending the sale to this [14] court?

A. That is correct.

Q. And will you state what those facts are?

A. If the court will permit me a few words, we had a piece, for instance, out in the middle of the San Fernando Valley. I tried desperately hard to sell it. I advertised it. My best offer was $65,000 which I knew was very low. It was sold over my objection.

All at once the market in the San Fernando Valley went sky high and I am led to believe that the owners of that property have been offered a quarter of a million dollars or $300,000 for that property.

Now, I have tried, not very seriously, but I have tried rather definitely to sell the oil rights down here. There has been very little demand for them. All at once out of a clear sky oil goes up and oil royalties are being sought very much—sought after, oh, very much.

Now, I have been under rather heavy compulsion, your Honor, to clean this affair up. Judge McCormick wants it sold. He told me so very frankly. At least he wants the thing cleaned up at the earliest possible moment.

His Honor, Judge Dickson, has been even more insistent that it be closed. When this offer came from Procter & Gamble it wasn't a bad offer. It sounded pretty good. We had testimony—maybe it was a little too cheap but not to me in my opinion. [15]

I am only stating my opinion now based on the evidence, both of my own knowledge and the evidence that was adduced at the trial. The price was pretty reasonable, reasonably fair. They were nice people to deal with. It was all cash. My only offset was I had to

(Testimony of H. F. Metcalf)

clear off a space on the corner of the tract and prepare it for them for a certain purpose. That was estimated to cost approximately $20,000.

We had a commission to pay which was perfectly all right, and we had payments to make to the Federal Government of about $20,000, which was pretty well set.

That would give to the secured creditors a payment of about $155,000 or $150,000.

Now, your Honor, I am very anxious to close this estate out. I have been under pressure to do it and I want to do it but I do want to do it in the proper way.

Now, since that came up it has delayed the matter several months and I have had a number of people, one of them tentatively offered me a half million dollars for the oil on the nine acres. Another offered tentatively $600,000 for the oil in the ground on the nine acres.

I told them that if I could make any composition with the Federal Government, any composition as to taxes, that I would recommend to the court a sale at $750,000 which, after paying any reasonable taxes and commissions and so forth, [16] would liquidate this estate; would pay the secured creditors, would pay the second creditors in full and pay such fees as have heretofore been allocated to the estate by the court.

Now, of course, I don't know—first, I haven't a definite offer but I am led to believe I am dealing with people, one of whom is in the court this morning, and would be very glad to testify if you wish to hear from him. He is a broker. He has been working very hard on it and claims to be in a position to sell it.

Now, your Honor, I don't know this morning whether we could get some assistance from the Federal Govern-

(Testimony of H. F. Metcalf)

ment. As the matter stands today it would cost us 42 per cent to sell on the profit the capital gain which the estate can't take. It will just murder us. It would cut the heart out of it. It would cut the heart out of the estate and make it impossible to sell.

On the other hand, attorneys of standing here in the court have advised me and also the purchasers, the proposed purchasers have told me definitely that the Government is amenable to various other ways to liquidate a bankrupt estate that might relieve us from, not all of the taxes perhaps, but a confiscatory tax as it will be in this case.

Now, your Honor, I am in a peculiar position. I am under compulsion by his Honor to clean this up. I want to do it quickly. I want to comply with the orders. But I [17] think the quickest way to do it and the only way that I can see at this moment would be to sell the nine acres and the oil, both of which are very, very valuable—very valuable.

The water frontage is valuable in itself. It is very choice. It is on a good channel in a good place and it is a splendid piece of property.

Q. Might I direct your attention to this situation? Is it true that now for the first time there are apparently responsible buyers available for both the land and the oil in one sale? A. That is true.

Q. And does the factors that are apparently available as price-making, are they very, very much higher than anything that could have been anticipated heretofore?

A. That is correct, very definitely, very definitely so —very definitely.

(Testimony of H. F. Metcalf)

Q. Is that in your opinion or from what the proposed buyers tell you traceable in part to the fact that there have been very numerous increases recently in the price of oil?

A. Yes, sir; that is true, and there are, perhaps, other increases scheduled.

Q. Mr. Metcalf, at the time of the hearing before the Referee in this matter a statement was prepared by my office, really by Mr. Gribble, setting forth the monthly production by years of oil in barrels and price, and at the bottom he [18] made a memorandum as to the price increases that had been received by you, which disclosed that on April 1st, 1946, there was an increase of ten cents per barrel. On August 1st, 1946, an increase—he has marked it here "13 cents to 27 cents" per barrel. It varied at that time, as I remember, by the gravity. And on March 19th, 1947, an increase of 22 to 25 cents per barrel. And on July 1st, 1947, an increase of 20 cents per barrel.

Do you know of your own knowledge that those increases were received at those times?

A. Yes. I know that they were received. I can't confirm the dates. I don't know those.

Q. Now, this question, Mr. Metcalf. Is it true that there has been another substantial increase in oil, the price of oil per barrel since December 1st, 1947?

A. That is correct, I believe, yes, sir.

Q. All right. Now, Mr. Metcalf, this question. In approaching royalty buyers subsequent to, or your conferences with their representatives subsequent to December 1st, 1947, did you make any discovery in reference to the price that they would be willing to pay for the oil

(Testimony of H. F. Metcalf)

itself as distinguished from the land on the theory that this sale would be confirmed and you no longer owned the minerals in place but only had an overriding royalty interest under the present lease? Would you answer that question yes or not, Mr. [19] Metcalf?

The Witness: What was the question? Did I know what?

Mr. Cahill: I will ask the reporter to read the question.

(Question read.)

Mr. Lynch: I object to the form of the question because it assumes that this is an overriding royalty. Actually what the trustee has left is not an overriding royalty. It is a landowner's royalty.

Mr. Cahill: I will strike the word "overriding."

The Witness: Yes, yes, I understood—yes, I made—

Q. By Mr. Cahill: Will you state to the court then what discovery you made?

A. Well, I made the discovery that those purchasers who wished to buy oil royalties do not want any interference with the nature of the royalty. In other words, they want any production that may accrue after the term of this lease. Now, the lease that we have on the land that was proposed to sell to Procter & Gamble, expires in 15 years. The general opinion among experts is that it is a long lived field. There are three different oil strata and probably one or two more that have not yet been explored and they did not want a termination of the lease in 15 years. And further, your Honor, I was agitated by the idea that if we sold this to Procter & Gamble someone might make a composition—Procter & Gamble could make a composition with the oil drillers and [20] cancel the leases, cancel me out, which would be murder.

(Testimony of H. F. Metcalf)

Now, in fairness to Mr. Bergen who represents Proctor & Gamble here, he has told me they will waive—that they will definitely waive their rights to purchase that lease prior to its termination unless the lease is cancelled by the driller because of non-production. That still leaves a rather heavy objection.

Q. And that is, Mr. Metcalf, that Proctor & Gamble cannot control the Universal Consolidated Oil Company, the present lessee, if they should elect to abandon the lease?

A. That is correct. Of they could sell, I presume, to somebody else.

Q. Or quitclaim the lease?

A. Yes, quitclaim the lease.

Q. Now, Mr. Metcalf—

Mr. Iverson: Mr. McCraney, representing Proctor & Gamble, and I are willing to make any reasonable stipulation or agreement that will meet the objections that have been raised by Mr. Metcalf—in other words, we have no intention of going around behind the trustee's back and buying up the interests of the Universal Consolidated Oil Company, and we are willing to agree to anything that will assure the court and trustee that we will not do that.

If the sale were confirmed we would assume that when the Universal Company is through that they would quitclaim to [21] us, but we have no intention of soliciting any release of their interest and we will agree that we will not do so. Is that sufficiently clear?

The Witness: That disposes of one very important objection that I had to the Proctor & Gamble sale. That disposes of one objection but not the other.

(Testimony of H. F. Metcalf)

Q. By Mr. Cahill: The other, of course, Mr. Metcalf, is beyond the control of anybody except the lessee, Universal-Consolidated Oil Company?

A. Well, the Consolidated Oil Company told me they could sell their lease—they would cancel their lease on one of their wells and named a price and I had a bidder the other day who told me they would overbid the Proctor & Gamble bid here.

I asked them what their procedure was and they said they would proceed to cancel out the oil leases promptly and clean them up.

Q. Mr. Metcalf, as trustee in this matter, you feel at this time, or do you feel at this time that the best interests of the estate and all the parties would be served by this sale not being confirmed but rather that the oil property land and oil being sold as one unit?

A. That is correct.

Q. And apparently you find now that for the first time there are buyers on that basis? [22]

A. That is correct.

Q. And you find that the price that they are suggesting is a very, very much higher price over anything that has been conceived of or received heretofore?

A. That is correct.

Q. Under those circumstances, Mr. Metcalf, are you prepared to inform this court at this time whether, having the knowledge that you have now with reference to these matters, assuming that you had had that knowledge last November and December, would you have recommended this sale? A. No, I would not.

Q. The answer was what, Mr. Metcalf?

A. No, I would not.

(Testimony of H. F. Metcalf)

Q. And do you at this time care to make any recommendation to the court as to whether this sale should be confirmed or not?

A. Well, your Honor, I think in view of all the facts, both such as I have obtained from Judge McCormick and also Judge Dickson as to the haste in closing this matter out, that the interests of the estate would be best served by giving me a further opportunity to liquidate the entire thing and at one swoop, and I think I can do it and do it within a reasonable time. I think I can. We have, as stated here, we have liquidated the secured creditors down to $300,000. Those figures are substantially correct. From $1,300,000. [23]

Now, we have unsecured creditors in an amount of approximately $200,000 and fees have been allocated somewhere between 75 and 100 thousand dollars.

That is the burden that is facing this estate to pay off. That can be done, your Honor. It can be done.

The Court: Under these subsequent offers to you?

The Witness: It can be done.

The Court: Or do you want a further opportunity to negotiate with other people other than the offers that have now been made since the sale?

The Witness: If you please, your Honor, I would like very much to have an opportunity to close a deal for the entire holding and pay off everybody 100 cents on the dollar. I think that can be done.

The Court: You have had representations made that that can be done from people who might purchase the property?

The Witness: That is correct, sir, people who have the money and whom I know to be competent and good.

(Testimony of H. F. Metcalf)

That doesn't mean, your Honor, I can absolutely do it but I wouldn't sit here and say this if I didn't think that I could. And I have been in this real estate business 40 or 50 years.

The Court: Are the people who have been recommended to you the ones who want to purchase the property?

The Witness: That is correct.

The Court: They want to purchase the property? [24]

The Witness: They want to purchase the nine acres and the oil without interference of any kind.

The Court: And their offer, you think, is a substantial increase over what this sale has been confirmed at?

The Witness: I don't object to this particular sale so much except it doesn't give me a chance to clean up and I want to clean up. Judge Dickson was very emphatic the other day. He gets that way and I felt—

The Court: I am not acquainted with Judge Dickson.

The Witness: He is the Federal Referee in Bankruptcy. That is the correct title.

Q. By Mr. Cahill: Let me call your attention to this. You have answered the court's question but the answer was negative but responsive. The court's question was, as I recall it, whether the offers now are substantially over—represent substantial increases?

A. Well, I haven't definite offers, Mr. Cahill. If I had one I would talk entirely differently. I haven't definite offers. I have had casual offers, your Honor. I have had men who say we can get $600,000. "Do you want to look at it?" And I said, "No, I can't wiggle out at $600,000. Will you pay $750,000?" They said, "We think we can get it—we think so."

(Testimony of H. F. Metcalf)

The Court: How much time do they want to think it over?

The Witness: God knows, your Honor. [25]

The Court: That is the trouble.

The Witness: Not too long. I don't want a long time. I don't ask for a long time.

Q. By Mr. Cahill: Mr. Metcalf, are either of those last figures that you named, $600,000 or $750,000—is the $600,000 that they suggest available and is the $750,000 offer available? Are either one of those figures a substantial increase over the price offered here of $198,000?

A. Well, to an extent, yes. Yes, they are. Here is what I am afraid of, your Honor. If I sell this land to Proctor & Gamble it is going to interfere with my further sale and if it does, why, it will just take that much longer to get out. It might take considerably longer. I am interested now in protecting the unsecured creditors. The secured creditors are amply protected. This estate today is worth well over three quarters of a million dollars. Well over that, and their balance here is approximately $300,000. I don't think they are distressed about it now at all. I don't know. They are here and they can state so if they are.

But the second creditors, it seems to me, they deserve some protection, and the charges against this estate I want to get money enough to liquidate—liquidate the entire thing and I want to do it as promptly as possible. I don't want to have this thing prolonged a year or two more. [26]

You know, your Honor, it is difficult to sell quickly in this kind of property. It is awfully difficult. You

(Testimony of H. F. Metcalf)

have to take— Now, there is a very hot market for oil royalties—very hot, something I haven't seen here in 12 years—nothing remotely like it and oil royalties are beginning to be very much sought for and people of large wealth are looking at them and figuring them very seriously.

Q. By Mr. Cahill: Have you discovered, Mr. Metcalf, since December 1st, 1947, that those buyers are reluctant to deal with you in reference to the royalties here because of this impending sale with the conditions attached?

A. Well, I have been told that that will be a serious detriment. Now, how much it would reflect itself in price, Mr. Cahill, or whether it would destroy the deal or not, definitely I don't know that. I have been told that it would definitely destroy one or two sales—that they would not buy a royalty that expired and that had the possibility of cancellation of some kind.

Mr. Cahill: I have no further questions. I don't know whether Mr. Nelson has or not.

Mr. Nelson: I would like to ask Mr. Metcalf one or two questions.

The Court: You may do so. [27]

By Mr. Nelson:

Q. One of the conditions of this sale to Proctor & Gamble is this, and you will correct me if I don't state it correctly, that certain installation, mechanical installations and storage tanks on the six-acre parcel which was sold, must be moved at the expense of the bankrupt estate?

A. That is correct.

(Testimony of H. F. Metcalf)

Q. To the other parcel, which is three acres, so as to concentrate on the three acres the principal storage facilities and other installations of the oil well operators.

Will the concentration and location on that three acres of all those installations operate, in your opinion, as a detriment to its use in the future—that is, to its use of the surface of that area in the future?

A. Very definitely. Mr. Starr, the president of the Universal-Consolidated, said if we move these tanks and this other installation to the three acres it will preclude the use of any part of the surface of it.

Q. It was a condition, was it not, of the lease that was made in 1937 to the Universal-Consolidated Oil Company, that the bankrupt estate reserved and should have the right to use the surface of the two leased areas to the extent that such use was feasible without interfering with the operation of the wells?

A. No. We made definite restrictions that we would [28] retain a depth of 150 feet from the water line back that they could not infringe on. We felt that might be of use on the six acres. We kept a street, at some points 27 feet wide, as access to the water frontage. I don't know that any—I don't think a restriction was made on the three acres. It was too narrow. But on the six acres we restricted that.

Now, I may say that the oil people have been very cooperative and very anxious to help us in every way possible.

Q. Well, the installations on the six-acre parcel at the present time—that is the oil operators' installations, do not interfere with its surface use?

A. Oh, yes, they interfere very definitely.

(Testimony of H. F. Metcalf)

Q. I mean, they do not preclude its use?

A. They don't preclude its use—they don't preclude the use of the water frontage.

Q. They do not?

A. No, we have 150 feet of depth there that we can use at any time and which they have no wells or no installations of any kind on it, and we have access to that.

Q. But if the principal installations are moved to the three-acre parcel will that parcel thereafter be salable in your opinion?

A. There will be no surface rights salable, I think, [29] at all.

Q. Because they will be burdened then for the life of the lease?

A. That is right, they will be burdened for 15 years.

Mr. Nelson: I apprehend some of this, your Honor, may be confusing to the court because you cannot, in the nature of things, be entirely familiar with the entire picture. We talk in abbreviated terms assuming that everyone understands what we are talking about because we have been in this case for many years and we all know what the subject is.

Q. The sale at $198,000 was not net. It required the trustee to pay for the cost of moving these installations, did it not?

A. Had a bid price on that of approximately twenty to twenty-two thousand dollars which we must pay. There was a commission allocated, I think, of $5,000 and Mr. Gribble advised me that the charge to the Federal Government would be approximately $20,000, capital gain tax. There would be approximately $150,000 left which would go to the Security Bank first creditors.

(Testimony of H. F. Metcalf)

The Court: $198,000?

The Witness: Yes, sir. That would enable us to liquidate our indebtedness—a sale at $198,000 would enable us to liquidate from $150,000 to $155,000 of indebtedness. That is the net amount and value of this sale. [30]

Mr. Nelson: With reference to the interest of the United States I think your Honor should be informed that by reason of the fact that the trustee, oil having been found on the leased land, received revenue from the operation of the oil wells. It was ruled in a case that went up to the Circuit Court of Appeals that the trustee was operating a business and that therefore the income of the bankrupt corporation was taxable like any other corporation. If it had been a straight liquidating proceeding and there had been no operating of any business, of course, the proceeds of the sale and so forth would not have been taxable. So, we have a tax problem running along with these sales.

The Court: Who can interfere with the tax problem?

Mr. Nelson: No one. No one at all. Nothing but changed conditions. We have that to face.

The Court: If there is $150,000 left to pay the bank what would be the balance of the bank's claim?

Mr. Nelson: Approximately $150,000, your Honor.

The Court: More?

Mr. Nelson: More.

The Witness: That has been paid down from $1,305,000.

The Court: It will leave about $150,000 more due the bank if this sale is confirmed?

The Witness: That is right, that is correct.

(Testimony of H. F. Metcalf)

Mr. Nelson: Then, your Honor, there are approximately [31] $200,000 of unsecured claims.

The Court: Unsecured creditors?

Mr. Nelson: And expense of administration which has been accruing for many years and they are quite large.

Q. By Mr. Nelson: Mr. Metcalf, a reservation or condition of that sale is that the bankrupt estate reserves the royalty interest—that is, its original landowner's royalty interest under the lease? A. Yes, sir.

Q. So it would receive the royalties under the lease? A. So long as the wells are properly operated.

Q. So long as the wells are operated by the Universal-Consolidated Oil Company? A. That is right.

Q. If the Universal-Consolidated Oil Company at some future date should abandon the wells so they would no longer be producing, the Newport Estate, the bankrupt corporation, would not then have any right to step in and operate for itself on its own account, would it?

A. I think not.

Q. Normally it would except for that condition?

A. That is correct.

Q. And the sale conveys to Proctor & Gamble, if it is confirmed, all of the mineral rights in the property other than the reserved royalties under the lease? [32]

A. Yes, sir.

Q. In other words, it gets the fee title with all the mineral rights?

A. That is correct.

Q. And the bankrupt estate reserves only the royalty?

A. Yes, sir.

(Testimony of H. F. Metcalf)

Q. Is it true—it is true, is it not, that there has been some possibility—at least the possibility has been considered and discussed by engineers at various times that other oil zones may be developed in this property in the future—deeper zones?

The Witness: Your Honor, there are deeper zones there that have been explored in contiguous property profitably. I believe one well was pursued. Now whether they got a profitable well or not we don't know. They say not, so I don't know. But there are two deeper zones, what they call the 237 zone and the Ford zone.

The Harbor District has been very productive. There is the Ranger zone, Upper Terminal zone, and Lower Terminal zone. Now, below that is what is called—I may be incorrect here—I am not a geologist, but below that in some portion of the harbor there is what is called the Ford zone and the 237 zone, and we are very hopeful that the three acres at least, if we retain that, might be explored for these lower zones. If we get profitable wells there this [33] estate is in very fine condition.

Q. By Mr. Nelson: If that should happen, if this sale is confirmed this estate would have no right in any oil subsequently discovered?

A. Subsequent to the expiration of the lease. No.

Q. And do you believe that in a reasonable time, if you have the opportunity, you could obtain a buyer for the land and the oil rights that would go with it?

A. Yes, sir, I do, definitely.

Q. And do you believe in the sale—

A. Counsel, whether or not that sale could be made with the incubus—of the cloud of the Federal taxes on us

(Testimony of H. F. Metcalf)

or not, I don't know that. I don't know, your Honor. We can't pay 42 per cent. That is flat and final. If we sold for $750,000 and had to pay $300,000 to the Government, why, we are broke.

Mr. Nelson: I would like to make this comment on that to your Honor. The tax problem is one that we would necessarily have to work out with the Internal Revenue Department and it isn't something that the trustee can determine.

The main point is, there is a valuable property here and it is sufficient, if sold properly, to pay all of the indebtedness of this bankrupt and let it go out of court with its debts paid. It has other residual assets of considerable [34] value but they are not in question at this time.

It seemed to us that the sale was improvident and I objected to it at the time it was up before the Referee for confirmation on the ground that the price offered was not adequate, and on the principal ground that the conditions of the sale left a burden and also restricted it further—that is, so restricted the oil rights as to—royalty rights, as to leave nothing with respect to this six acres in the bankrupt estate except the royalty interest for the life of the lease, whereas there might be—there is a possibility that there are other oil values in that property which should be preserved and would go to the buyer who would pay an adequate price.

Q. The indebtedness of the Security-First National Bank at the time of the adjudication was, after the indebtedness had been adjusted, was about $1,307,000, was it not?

(Testimony of H. F. Metcalf)

A. Yes. Yes, I think so. I have a complete setup here. The original loan, your Honor, was $760,000 and the Security Bank advanced it and the interest rolled up and they paid taxes and I have the statement here showing that when I came into this there was practically $1,304.918 due the bank.

The Court: What is that balance now?

The Witness: Their balance now is $322,156. Now, against that, your Honor, I have on hand a mortgage of [35] $8,000 which is perfectly good and $3,000 is interest which I expect to pay rather promptly and we have a $15,000 sale in escrow now, so I think it is safe —I think I am quite safe in saying the bank balance is about $300,000. We paid our interest and taxes promptly.

Mr. Nelson: The record of this case will disclose this, your Honor, and the accounts from the beginning of the bankruptcy, the revenue derived principally from the oil there—there were a few sales but it was derived principally from the oil.

The Witness: Mr. Counsel, there was $416,000 worth of real estate sales. We have sold $416,000 of real estate property.

Q. By Mr. Nelson: But over the period of this receivership, which has now run about 11 years—that is, since the adjudication in bankruptcy, and the receivership was originally two years before that, was it not?

A. I believe it was.

Q. The principal indebtedness to the Security Bank has been reduced from over $1,300,000 to about $300,000?

A. That is correct.

Q. Net? A. That is correct.

(Testimony of H. F. Metcalf)

Q. And in addition to that taxes on the property and interest on the indebtedness to the bank has been paid, has [36] been paid, has it not?

A. Paid the Government some very large sums.

Q. And substantial sums have been paid to the Government for taxes?

A. That is right. Paid them $65,000 in one year. We have paid heavily in taxes.

Q. Mr. Metcalf, do you now recommend that the sale be confirmed or would you recommend that it be confirmed if it were again before the Referee?

A. No, I would not. I would like very much further time to work this out.

Mr. Nelson: I would like to say, to your Honor, aside from the view of the trustee, which I think is honestly changed, and properly so because of conditions which have developed very rapidly, there are basic objections to this sale because it isn't $198,000. It is a great deal less than that. One of the conditions of the sale creates a burden on another important parcel of property and it practically restricts the use of the other parcel. No one would buy it for any use except to obtain the oil from it for, the next 15 years and when a sale is predicated on a condition like that I think that it is quite proper to inform the court and to ask the court to consider the equities of the situation and the fairness of it and whether or not it is in all respects advantageous or disadvantageous. [37]

If it is disadvantageous, if it carries burdens which will be projected into the future, which may interfere instead of assisting in the long run in the complete liquidation of this estate, then I don't think the sale should be confirmed.

(Testimony of H. F. Metcalf)

Cross Examination

By Mr. Lynch:

Q. Mr. Metcalf, your present views are the result of certain conversations that you have had with brokers concerning the possible sale of this property, isn't that true? A. That is correct.

Q. In other words, there has been no definite offer made to you by anyone for the property?

A. I think I could have had one or two but they weren't of a price on the basis I felt I could operate.

Q. But you have actually received no offer?

A. I have actually received no checks. I have not entertained them. I haven't asked for them.

Q. So that you do not propose to say to the court at this time that you can or cannot make a sale at more advantageous terms?

A. I think I explained that to his Honor.

Q. It is based purely on what you have learned in reference to the possible value of the property?

A. I have been doing this a good many years, your [38] Honor, and I feel very positive that with the sales, with the briskness in the market of oil royalties we should be able to liquidate this and pay off everybody—clean up the whole estate and that is what I am told I should do.

Q. At the time that the sale was confirmed by Referee Dickson it was then your opinion that on the basis of the facts then known to you and the then market conditions that it was an advantageous sale? A. Yes.

Mr. Lynch: That is all.

I think possibly it might be helpful to the court if I very briefly explained something about the character of this property and exactly what this sale is.

This estate has two parcels of real property fronting on Channel No. 3 at Long Beach. One consists of six acres and one of three acres. Both properties were leased after bankruptcy by and with the approval of the court to the Universal-Consolidated Oil Company for the purpose of drilling and producing oil.

The lease reserves to the trustee in bankruptcy 35 per cent. The Universal-Consolidated Oil Company has drilled on both properties. Oil has been produced as the trustee has testified.

Now, this sale was of all the fee in and to the six-acre parcel, reserving to the trustee in bankruptcy only, [39] all of the rights of the trustee under the present oil lease. In other words, so long as that lease continued in existence and so long as the Universal-Consolidated Oil Company continued to produce under that lease. All the royalties payable under the lease are payable to the trustee in bankruptcy.

The trustee is parting with no title to the three-acre parcel either in fee or oil rights.

Mr. Iverson: If it please the court, my name is Paul Iverson. I am representing the Security-First National Bank.

I might state first that the Security Bank is very much interested in seeing this estate liquidated and all creditors paid and if the bank felt certain that there would be a liquidation of this estate within a reasonable time where the sum of $300,000 or $600,000 would be received, I am certain they would have the absolute cooperation of the bank.

However, I might point out to this court a fact which is probably not known to this court, but is well known to the rest of us. That is, that this estate has been in receivership and bankruptcy now for over 13 years and every time we have a substantial sale of an asset or anything done toward liquidating the estate we have something brought before the court, by either the trustee or the bankrupt or [40] the unsecured creditors, which would indicate that there is to be a refinancing or a sale of all of the assets which will bail everybody out.

This court is not familiar with the record and for that purpose I am going to read part of the proceedings before the Referee at the time this sale came on for approval before the Referee.

The statement was made on the witness stand by the president of the bankrupt corporation that he then had a refinancing scheme and he had—I am not sure whether he said a commitment, but an offer from financial institutions which would give sufficient funds to pay everyone off in full.

Under cross examination we brought out these various things. I am reading now from page 236, beginning with line 9, of the transcript before this court:

> "Q. Going to this refinancing, as a matter of fact, Mr. Newport, in 1935, 12 years ago, when the Security-First National Bank was before Judge McCormick, asking for permission to foreclose on your assets. you at that time stated to Judge McCormick that you had a refinance program, did you not?
>
> "A. We thought we did with the R. F. C.
>
> "Q. And you so stated to Judge McCormick?
>
> "A. I did. [41]

"Q. And in 1924 when this matter was before Referee Utley and there was a proposed sale of the San Fernando property, you stated then that you had a refinancing program?

"A. Yes, at that time we were negotiating it.

"Q. And you stated before Referee Utley that you had a refinancing program?

"A. We stated the loan was being negotiated.

"Q. And in 1944, before Referee Utley, when the Security Bank was again trying to foreclose, you stated to Referee Utley that you had a refinancing program, didn't you?

"A. I said we were negotiating one; I didn't state it."

Your Honor, every time any type of sale or attempt to foreclose or liquidate the assets of a substantial amount has been brought before the court there has always been something thrown up which would indicate we were about to the point where we were going to refinance the thing or sell to someone whereby everyone will be paid off in full.

Now, as has been stated, there is no definite offer here. If they had a definite offer, a commitment, the bank would be one of the first to back away from this sale. We don't want to see the assets sold and get partial payment if it is possible to get complete payment. [42]

As I said, we still have an obligation to the Security Bank—that is, the bankrupt estate will have, of approximately $150,000 or in excess even of this sale.

I wish also to call to the court's attention the fact that by and large practically all of the income to this estate during the bankruptcy proceeding has been from oil—from the oil wells. By the sale of this real estate

to Proctor & Gamble the trustee is reserving that oil income from the property. They are not giving that up. They will still get the oil income from this property and this $198,000 is just for the surface rights and they still will be getting that oil property income.

Mr. Metcalf has stated that in this time the trustee has received over one million dollars from oil and that is not being given away.

The statement was made here that there were three zones, three oil zones, under this particular property, and there was an intimation made that there had not been a proper determination of whether the zones had been explored properly. Maybe the trustee was giving up some oil rights in the lower zones. That was gone into very thoroughly in the hearing before the Referee as to whether or not there was oil in the other zones below the one that is now producing.

I might state for the information of this court that there are apparently three oil zones under this property. [43] One is called the Ranger zone. Another is called the Ford zone. And another is called 237 zone. There is a well on the six acres that is producing from the Ranger zone now. The Ford zone was explored by the Universal-Consolidated. A well was deepened into that zone and the Universal-Consolidated did not, in their opinion, get oil in commercial quantities and so they filled it in.

Now, there is a great question as to whether there is any oil in the 237 zone, which is even deeper in that particular location. So, although there may be oil below the property there has been an attempt to recover it before this transaction was made.

This matter was approved by the Referee approximately three months ago. And as the trustee has stated, the increase in oil prices took place, practically all of them, before that time. There hasn't been too large an increase in oil prices since December 1st.

The Court: Was that matter presented to the Referee?

Mr. Iverson: The increase in oil price?

The Court: Yes.

Mr. Iverson: Everything was gone into at the time, your Honor.

The Court: Before him three months ago?

Mr. Iverson: Everything was gone into. In fact this matter took—we would hear it one day and continue it over [44] a period of probably two or three weeks to hear the matter. There were probably a total of five or six days in the actual hearing and the Referee went into the thing very thoroughly before this matter was approved.

Now, we cannot see what has happened since December 1st which would in any way change the situation to upset this sale. There has been some talk to the trustee that he might be able to get more money if he sold all the estate, but he has no definite offer and as I said before, your Honor, every time we come up for a sale of an asset there is always something thrown up that they are about to refinance or about to resell or something which will bail all the creditors out.

The Witness: If your Honor will permit me to answer that—

The Court: Certainly.

The Witness: The testimony of this bank in my affairs has been shocking, utterly shocking. I can prove it. They have been universally wrong. The testimony is

they have gotten about 80 per cent of the income, the total income. They have been paid down to practically nothing. They have interfered with every sale I have attemped to hold up or make. I may explain, your Honor, a man went into the bank and bought a lot under my care. They didn't send him to me. He offered $900.00 for it. He came over to me [45] and I threw him out. Definitely I threw him out. I said, "Either you are crazy or I am crazy. Get out."

The bank called me up and intimated I might be sued on my bond. I suggested they run their bank and let me attend to my business. We sold the lot for twenty-odd hundred dollars. I think $2,500.00.

That has been the thing right along. Now, the bank testified—to start this affair they had three geophysical experts who testified there was no oil in the Long Beach Harbor. They were three prominent people. They testified they were going to lose one million dollars in this estate. That testimony was had. They would lose one million dollars. They have had one million dollars. Instead of losing it they have had it and they don't stand to lose a dime. Their principal has all been paid. They are working on interest now.

I think they have had one and one-half per cent interest. If we bail out and pay the rest of this they will get six or seven or eight per cent on their money. I don't know what the bank wants. I wish to heavens they would let me run this and let me attend to the real estate end of it.

The Court: Why do you think they are objecting to this confirmation?

The Witness: My God, I don't know, and taking this loss. [46] God knows, your Honor, I don't know why it was they forced us to sell a half mile square in the San Fernando Valley for $65,000 and throw in 85 acres of

hill land. I objected to it. The court said it was the best offer I had. "You have been eight years here." I didn't have the heart to fight it. It is pitiful, your Honor. If I had it today we would be out of bankruptcy.

Mr. Cahill: I have no further questions, Mr. Metcalf. And I don't think other counsel have.

The Court: Who represents the successful bidder here? Have you anything to say?

Mr. McCraney: Yes, your Honor.

The Court: I would like to hear from you.

Mr. McCraney: We feel, of course, that we are somewhat in the middle on this. As Mr. Metcalf says, our relations have been very amicable and we assumed we could work out a deal that was satisfactory to all the parties.

The Witness: Grand people, your Honor.

Mr. McCraney: We are in a poor position to come before the court and attempt to limit an examination into the problem, because, as your Honor said, and as counsel said, surely the trustee is entitled to be heard as to what his present feelings are on the merits of the sale.

I would like to say a little something to clear up just what we are getting. It is true we are buying the [47] fee subject to our obligation, subject to the right of the trustee to receive this royalty during the term of this Universal lease. But, of course, we are primarily interested in the surface and not the oil and as long as those surface installations stay there on a substantial portion of the property we are very seriously limited in the use we can make of the property.

We feel that the price is fair on the thing. As to the wisdom of the trustee selling or not selling, that is a matter within the trust and not properly our decision. But as one point of caution I would suggest that if the

court comes to the conclusion that the sale should not be confirmed that, rather than simply putting us out in the cold, as it were, that the matter be held up pending some possible adjustment that might protect the bankrupt estate in its right in the oil. In other words, as I say, we are not in the oil business and the reason we want the oil is not, and I think this is true when I say it, not that we want to go into the oil business but we don't want to have somebody come in there where we have a soap factory and give them a right to drill for oil and have such a restriction on our use of the surface of the property.

That was our primary consideration in asking that we get the fee at the expiration of the lease rather than leaving the oil rights in the trustee for all time to come. [48] The trustee wouldn't do it but there are a lot of people in the world who would enjoy holding up Proctor & Gamble if they had some kind of mineral right they could enforce. So, that is my suggestion, that we consider the possibility of something that may be done to protect the trustee on his oil rights. It may not work. I don't know. My people may not want to pay all that money if they have to change the terms, but I recommend against a flat disaffirmance of the sale if there is any possibility of working this thing out.

The Court: So you want your sale confirmed?

Mr. McCraney: We want the sale confirmed as it is, of course. I think it might be well for the court to consider this other point. Mr. Metcalf has referred to possible sales based on a price of $700,000. Such a sale refers to the land and the oil on two tracts and not one. If the sale were made then the bankrupt estate would not continue to receive the royalties they have been receiving.

In determining just how fair our offer is I think it is necessary to determine what would be the net to the bank-

rupt estate if such a sale were made and what portion of that net would be properly attributable to the part that we are buying. I am not sure that it would turn out. They are getting a lot more money for that than we are willing to pay. It may be that Mr. Metcalf, as he says, would be aided in selling. [49]

The Court: But he would still have to negotiate with the Government.

Mr. McCraney: Yes, sir. And also still faced with the fact, as Mr. Metcalf has said, that these are not firm offers.

The Court: The Government is not an easy man to negotiate with when it comes to paying taxes. That has been my experience in cases in my court. That is the law. They have to follow the law. This is a tax payable to the Government and it is natural the administrative offices have to follow the law.

After you pay that what is there left in this future contemplation of getting $500,000 or $700,000 if you pay that over and above your price?

Mr. McCraney: I don't know. I don't know. Mr. Metcalf, do you?

The Witness: Yes, yes.

The Court: What would there be left?

The Witness: I might settle it, your Honor, on the basis of 29 per cent and not pay anything except as I receive the money later. We have discussed many avenues of this and I think, your Honor, I think from what these gentlemen say, I think if we send a man to Washington, and strictly within the law—

Mr. Cahill: I will state to your Honor that, answering your Honor's question, in the viewpoint of the tax law ordinarily, as your Honor knows, a bankrupt estate

pays no [50] income tax on sales. The reason for it is it is in liquidation. It was held in this case that Mr. Metcalf was not liquidating; that he was conducting a business and therefore under an amendment by an Act of Congress a trustee in bankruptcy or a receiver conducts a business and naturally he should pay income taxes like anybody else. So, the problem here is that this estate is required to pay income tax on the revenues by way of royalties. Our relief, it seems to me, is to move from this operating receivership to a liquidating bankruptcy through the filing of a Chapter 10 proceeding.

Judge McCormick has pointed out informally a number of times the possibility of doing this.

It is my understanding from conferences I have had with tax officials that if it were purely a liquidation process it would be tax free. We propose to move from this proceeding to a Chapter 10 reorganization proceeding.

As I stated to your Honor, I have no further questions of Mr. Metcalf. I am now prepared to assume the burden of proceeding in the regular manner with the petition filed for review of the order which would contemplate pointing out to your Honor the errors that we see have been made in that order. They are numerous.

The Court: In other words you have no further evidence you wish to present before the court? [51]

Mr. Cahill: No, your Honor.

The Court: Do any of the other parties want to present any evidence in addition to that which is in the record before the Referee?

Mr. McCraney: Not I.

Mr. Iverson: No, your Honor.

Mr. Lynch: Not I.

The Court: In addition to what is in the record before the Referee.

Mr. McCraney: Not I.

Mr. Iverson: No.

Mr. Lynch: Not I.

Mr. Cahill: You are excused, Mr. Metcalf.

The Court: You are excused, Mr. Trustee.

Now, you want to be heard upon the record before the Referee?

Mr. Cahill: Yes.

The Court: You may proceed.

Mr. Cahill: I have stated to your Honor heretofore that the creditors I represent amount to a sum slightly in excess of $80,000. I neglected to state the unsecured claim of the Bank of America, it being also a secured creditor but has unsecured claims in the amount of $64,000. So, if $200,000 represents the unsecured claims referred to by the trustee, $144,419 of that amount is represented by Mr. Nelson and [52] myself.

I desire, first, to direct your Honor's attention to the objections that were filed in writing, prepared by my office or me personally and are set forth in nine typewritten pages.

I might pause to inquire of your Honor whether your Honor has had an opportunity to read the certificate on review.

The Court: No, I have not.

Mr. Cahill: Or the transcript.

The Court: No, I have not.

Mr. Cahill: Thank you, your Honor. Then briefly I will indicate to your Honor what the objections were.

The first objection set forth in Paragraph 1 had to do with the price. The objectors stated that in their opinion a fair market value of the property offered was $400,000 and as such the offer of $198,000 was entirely inadequate. That was objection No. 1.

Now, in support of that, Paragraph 2 stated that the lands were appraised about a year prior to the filing of the objections by an appraiser who was referred to in the sworn objection as a thoroughly competent appraiser, one who rendered a report to the bankrupt stating that the subject lands at a fair market value in the sum of $391,386.60.

And finally, in support of the matter of the [53] inadequacy of price, the objectors stated that they were informed that, because of the tremendous development program by the City of Long Beach under way in reference to its harbor, as well as for a number of other well known reasons, that the fair market value of said lands had increased since said appraisal was made.

Now, we drop that subject matter then in the objections, if Your Honor please, and proceed to Paragraph 3 of the objections wherein we set forth that the conditions set forth in sub-paragraph B of Paragraph 4 of the trustee's petition for confirmation, to the effect that the trustee shall convey to the buyer "all minerals, oil, gas and other hydrcarbon substances in or produced upon said lands," reserving only to the trustee the rents or royalties under the present lease with Universal-Consolidated Oil Company, is not only inequitable and unjust but highly dangerous in a business sense as to the trustee, and will, as your objectors are informed and believe, operate to the detriment of the within estate and to their rights therein by causing a loss to the estate which may

exceed in amount the total purchase price of $198,000 offered by the proposed purchaser.

And then we specified, if Your Honor please, under sub-paragraphs A and B, why we believe that.

Under "A" we stated it was our belief and information that had come to the objectors and therefore we allege, [54] that because of the difference in value to royalty buyers between minerals in place and owned by the sellers and rents and royalties under a lease, that the value of the estate herein of its interest in the oil and gas yet to be recovered from said lands, will drop fifty per cent immediately upon the transfer of said lands under said condition and that said depreciation will take place solely because of said condition. And we believe that much more now, Your Honor.

I will pause to say we feel that we have proved that before the Referee by thoroughly competent experts and we felt that while the Referee commented on the inadequacy of the price, at the end he made no comment on this matter at all, so the point of the objectors to the conditions under "A" was simply that a royalty buyer will immediately say, "Well, I would have given you, if you could place the minerals in place to me before you made this sale to Procter & Gamble, I would have given you a dollar. Now, I will give you fifty cents."

Now, under "B" we set forth as follows. that in addition the estate under said conditions and notwithstanding said reservations of its rights under the lease, will be in grave danger of taking an equally great loss by being deprived in the future of all rents and royalties now being received by said trustee through his present lease with the Universal-Consolidated Oil Company. We stated the

reason was obvious. "Universal-Consolidated Oil Company has the [55] right to abandon its lease with the trustee at any time by quitclaiming the demised premises to said trustee, or otherwise."

We state further:

"If that were done today the trustee has a perfect legal right to lease said lands to other oil companies. It is common knowledge that in the Los Angeles Basin lands are frequently re-leased profitably after the original lessee-producer has abandoned his lease."

We further state that he would also have the right, following such an abandonment or quitclaiming, to enter upon said lands and produce the wells now located thereon and taking the entire production to himself.

And reading further:

"Both of said rights will be immediately lost to the trustee because of said condition."

And we said further:

"It is equally obvious that the proposed purchaser could under said condition, with perfect legal right approach said Universal-Consolidated Oil Company the day after the proposed purchaser acquired title, as proposed, and offer to said oil company any sum from one dollar to a million dollars that it thought said oil company would accept as an inducement to abandon its lease or to quitclaim said described lands." [56]

And we finally said,

"And the day after that happened the purchaser could release the same lands with perfect legal right

to Universal-Consolidated Oil Company, or to any other person, and the trustee would not only no longer have any interest in the oil and gas produced from said lands or the rents or royalties therefrom, but he would have no right to complain of any such transaction, because under said condition he not only leaves himself wide open to the happening of such a transaction, but even though unintentionally, he almost invites it."

Mr. McCraney: Do you say that objection still obtains after the offer I agreed to stipulate to?

Mr. Cahill: Yes, just as Mr. Metcalf pointed out, the Universal-Consolidated Oil Company still retains clearly the right under its contract to quitclaim at any time for any reason of its own and to abandon it at any time for any reason of its own.

If you could or your purchaser could have Universal-Consolidated Oil Company standing with you there and making certain commitments that they wouldn't abandon for 15 years, wouldn't quitclaim for 15 years, then, as Mr. Metcalf said, you would possibly have met fully the objection and not half of it. Have I answered your question? [57]

Mr. McCraney: May I ask, does my agreement to stipulate and to agree completely meet your objection here that we might approach them and buy out their interests?

Mr. Cahill: It does not protect us for the 15-year period.

Mr. McCraney: We can't control a decision they might make to give up the lease.

Mr. Cahill: That is our point.

Now, we have already covered two main points of the objections and we proceed with Paragraph 3 to an entirely different objection.

We state that underlying the oil sands now being produced there are two lower oil sands known as the Ford zone and the 237 zone. We say they are now being produced profitably on adjacent and adjoining lands from wells that are within at least but a few hundred feet from wells now on the lands proposed to be sold under said conditions.

We state that as of this time Universal-Consolidated Oil Company has not produced from either of said lower zones and may or may not be interested in producing from them, but that under conditions as they now exist the trustee has the right to produce from those lower sands or to contract to do so with other oil companies in the event that Universal-Consolidated Oil Company should elect not to produce from those lower sands or quitclaim said lands or abandon their [58] lease.

Then we point out the trustee's right to so produce the lower sands upon the happening of any or all of said events.

And then we allege—we objected for that reason, that the loss thereby which might be suffered by the estate would be in a sum far in excess of the proposed total purchase price of $198,000.

Then we set forth finally under that paragraph the total oil produced, which Your Honor is familiar with because of the questions I propounded to Mr. Metcalf, in the amount of $1,231,901.87 of royalties received and banked by the trustee and the $469,477.06 of royalties

actually banked by him were attributable to this particular parcel, the six acres.

Then we move to another ground of our objections which is set forth under Paragraph 4. We state that the offer of $198,000 is not in reality an offer that sum at all because as set forth in sub-paragraph D of Paragraph 4 of the trustee's petition for confirmation, the proposed purchaser attaches still another condition to his offer and that is that the trustee shall pay all costs for moving "all storage tanks, power poles, oil lines, sumps, steam lines, and concrete walls," now located upon the lands.

There was an indication by the objections that there [59] was danger that while the trustee was engaged in those operations of flooding or some other damage and that he, the trustee, and the estate would be liable for it.

The cost of moving the above items was estimated at fifteen or sixteen thousand dollars. We stated that there was no assurance that it might not be even double or treble that figure and that we were reliably informed that the cost would be approximately $33,000.

The trustee met that at the hearing by bringing in a written offer from a responsible company for $22,000 which was considerably over their estimate of fifteen or sixteen.

Then in Paragraph 5 we proceeded to another objection and that had to do, if Your Honor please, with the fact that this sale under the present method of operation, as an operating receivership, would require in addition to the cost of removal of the equipment another deduction —Uncle Sam's share because of the profit on the sale

which would further reduce sharply the amount available to pay the Security Trust Company.

We also stated that the debtor's ability to rehabilitate himself through a plan of reorganization now being worked out, with the aid and cooperation of a number of his important creditors, would in no way be aided by the approximate sum of $140,000 which would remain after deducting expenses of equipment removal, income taxes and so forth. [60] Just to the contrary, he would be delayed and possibly defeated.

We submitted finally as a reason thereunder on that ground of objection, that if thereafter the trustee as lessor and the Universal-Consolidated Oil Company desired to extend the term of the lease or to modify the lease for their mutual benefit they couldn't do so without the consent of the proposed purchaser and it is self-evident that such consent would be withheld.

I stated finally that the legal question that arises under such consideration has possibly been decided in an oil and gas case by the Supreme Court of Oklahoma and the precise question has recently been placed before the California Supreme Court, which court has referred the matter to the District Court of Appeal for the Fourth District for decision.

I might state to Your Honor that that was my own case which was decided adversely to me by the District Court of Appeal of this State, which has, as I indicated here, adopted the decision of the Supreme Court of Okla-

homa which I indicated I thought would likely become the law in California.

The final objection is set forth in Paragraph 6 and is as follows—it sets forth facts there that the bankrupt has obtained a commitment in the sum of $400,000 from a life [61] insurance company and an additional $75,000 working capital, and that his plan of rehabilitation would be interfered with by this sale.

There were other creditors and they filed written objections. Their objections were very brief. They raised this point, which I thought at the time had merit and I presented evidence under it. They say the record does not indicate that a sufficient public advertisement of the sale of the property had been made to enlist the interest of proposed buyers able and willing to purchase the land—purchase land of the character proposed to be sold.

"That the contemplated sale price of the property does not appear to be its fair market value in view of the statement of the trustee herein, made by written communication to the Referee herein, dated July 2nd, 1947, to the effect that the trustee was asking $374,000 for the Wilmington property."

As a final objection it was alleged that the sale of the property, imposing upon the trustee the obligation to remove the obstructions upon the property, would create a personal liability for damages incurred in the operation and to the extent of the power in the trustee to engage in such operations.

Now, the Referee at the conclusion of the taking of evidence made a statement. He said [62]

> "Gentlemen, I see a man sitting out there in the courtroom and he is expecting a commission in this matter, a real estate broker's commission."

And he said:

> "I will state now that I told him that if he contacted a buyer that I would see that he got compensation for his time and his license as a broker, and the compensation, I told him, should not exceed $5,000 regardless of what the price was." And he said,

"Gentlemen, I am going to make an order confirming the sale." He said, "I elect to take the appraisal of Mr. Mason," and he walked off the bench.

Now, the importance of that will soon be seen when I direct Your Honor's attention to our written petition for review of the said order. Those objections are set forth in 12 typewritten pages and I will try to be very, very brief in getting them before Your Honor.

We recite the fact of the filing of the petition and of the objections—

The Court: It is twelve o'clock, and we will recess until two o'clock this afternoon.

Mr. Cahill: Thank you, Your Honor.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same day.) [63]

Los Angeles, California, Thursday, March 11, 1948
2:00 P. M.

The Court: You may proceed.

The Clerk: In the matter of F. P. Newport Corporation, Limited, No. 25308-M.

The Court: You may proceed.

Mr. Cahill: I am forced to address Your Honor under slight difficulty. I have been battling a sort of laryngitis for three days and taken orally penicillin.

The Court: You may take it easy; don't exert yourself.

Mr. Cahill: My throat dries every once in a while and I am in some difficulty and have to pause.

The Court: Don't let that disturb you. I understand it.

Mr. Cahill: Just before the recess I started to direct Your Honor's attention to just what we stated in the petition for review of the Referee's order and I had proceeded to the point that, after setting forth the historical record of the filing of the petition for confirmation and of the objections and of what the objections set forth. We then proceeded to set forth a recital of what took place at the hearing.

I recited that the hearing was held over various days in November and December and then we move to Paragraph 9 on page 6 of the written objections and we set forth the following:

"That said order was and is erroneous in that: [64]

"(a) It in effect overrules and denies all of the said objections notwithstanding that the evidence presented and received in support of the said objections,

not only fully supported and sustained said objections but was practically uncontradicted as to all matters set forth in said objections with the single exception of the question of present fair market value.

"(b) That it authorizes the sale by the trustee, over the written objections of possibly a great majority of the creditors, of a valuable asset of the within estate at a grossly inadequate price, believed by your petitioners to be approximately one-half of the fair market value of said six-acre parcel, which belief is supported by the testimony of the witness Higgins, who, as chief valuation engineer for the Southern Pacific Company, placed a value of $60,000 per acre upon said six-acre parcel, same being exactly the value his company had placed upon its adjoining lands which he held to be exactly comparable.

"(c) That it authorizes the sale upon the terms demanded by the purchaser in reference to the transfer of the mineral rights, whereby the trustee, being no longer the owner of the minerals in place, [65] but having only a royalty interest therein expressly limited to the present lease, will become immediately subject to the possibility of immediate and complete loss of the remaining oil and gas, not only as to the present producing sands, but also as to the said productive lower sands.

"(d) That said proposed sale is unwise in this, that it changes a sound business and legal relationship now existing as to oil and gas remaining to be recovered from said lands, into an uncertain one subject not only in a certain sense to the whim or caprice of the present lessee, but subject also to the

facts that upon any day after the sale, either for a small or large consideration paid by the proposed buyer to the present lessee, or for no consideration whatsoever so paid, the trustee can be fully and finally divested of all remaining interest in the oil and gas from said lands by the present lessee by simply informing the trustee that he has quitclaimed said lands, as authorized in said lease, or that he has abandoned said lease in its entirety.

"(e) That all of the testimony as to present fair market value has been ignored but said order is predicated upon findings that notes only an appraisal made in either December 1945, or January [66] 1946, whereas all of the testimony as to present fair market value disclosed that all lands in the Long Beach Harbor area have greatly increased in the two-year period that followed said appraisal.

"(f) That the trustee admitted that he has not advertised the property for sale in any manner, except a brief notice in the Los Angeles Daily Journal, notwithstanding the fact that when he did extensively advertise said property for sale in January 1946, in newspapers in various large cities upon both coasts, that he received, in the then not nearly so favorable market, numerous inquiries from corporations, brokers, and others.

"(g) That as late as July 2nd, 1947, the trustee believed that a buyer could be secured for said six-acre parcel in the sum of $374,000 for as shown by the evidence he wrote the Referee herein, on that day, to that effect.

"(h) That as shown by the uncontradicted evidence, the trustee will be required, under the drastic terms of sale imposed by the buyer, not only to assume the risk of damage to person and property through fire, explosion, or otherwise; through the removing of the oil tank farm equipment to lands not proposed to be sold at this time but also to pay from [67] the funds of the within estate the minimum sum of $20,378 for such removal.

"(1) That it ignores the recommendation of A. A. Carrey, who has been the petroleum geologist and engineer advising the trustee herein, as to the oil and gas upon said lands, for a number of years. That the said lands not be sold upon the drastic terms imposed by the buyer as to the transfer of the mineral rights, because an immediate loss will be suffered by the estate in the depreciation of the market value of the mineral rights. The uncontradicted testimony of Mr. Carrey is on this point in part as follows:

" 'It is my opinion that if this sale is made that the present landowner, the F. P. Newport Corporation, will suffer a decided loss in the sale value of their landowner's interest.'

"(j) That it ignores the recommendation of Mr. Carrey that the sale be not made for an entirely different reason stated by him as follows:

" 'I believe that the most serious effect that the sale would have upon the F. P. Newport Corporation is the matter of the termination clause in the present lease. If such a sale is made the F. P. Newport Corporation has not power to prevent the present [68] operating company from terminating said lease,

and as a result of such action the F. P. Newport Corporation could in no way continue the oil operations.'

"(k) That it directs the payment of an alleged real estate broker's commission in the sum of $5,000 through an attorney at law, who is apparently also licensed as a real estate broker, notwithstanding the fact that said attorney was at no time employed by the trustee herein in any capacity,—attorney, broker, or otherwise, and that it appears from the uncontradicted testimony that said attorney and the proposed purchaser entered into an agreement, without the knowledge of the trustee, that said attorney would be paid a 'finder fee'. As such this obligation would appear to be that of the party found and not the obligation of the trustee who had no agreement in writing, as required by the laws of the State of California, with any person for his employment as a broker, or otherwise or at all.

"In this regard it should be noted that the trustee herein is a licensed real estate broker, who is allowed fees from time to time for his services as trustee herein, including $3,000 allowed him on December 23rd, 1947, for services rendered in 1947, and, that the record herein discloses that said [69] trustee, about the month of January 1945, received an offer of purchase from the present proposed purchaser, for the same six-acre parcel, in the sum of $180,000, which offer the trustee declined, he then having a higher offer; and that thereafter said attorney-broker conferred with the Referee herein and asked if a commission would be paid him if he was successful

in finding a purchaser for said land; and that the Referee expressed an opinion that a commission would be paid because of the fact that he did not recall of sales of real estate being made before him where some real estate broker was not paid a commission; and that thereupon the said attorney wrote a letter to the corporation whose offer had been so declined by the trustee herein, and finding a continuing interest in the property upon its part here thereupon entered into said agreement for a 'finders fee.'

"The practice of buyers employing agents to secure scarce merchandise, or to induce reluctant owners to sell real estate, has developed in this period of scarcity, but the fee to be paid therefor is a fee to be paid by the buyer for whom the service is rendered, and is never a burden to be imposed upon the seller. In any event, such fees are not contem- [70] plated by the provisions of the National Bankruptcy Act and cannot be sustained and most certainly not under the circumstances here."

And the final sub-paragraph (1):

"(1) That creditors herein have received no notice whatsoever as required by law of a hearing of a petition for the allowance to said attorney-broker of either a real estate commission or a 'finders fee.' The petition filed by the trustee herein failed to request authority to pay any such commission or fee to any person whomsoever and the notice thereof to creditors stated only the facts set forth in said petition."

And that ends, Your Honor, this long paragraph 9 wherein we set forth the reasons that we believe the order is erroneous.

The rest of our objection was confined to two short paragraphs, 10 and 11, wherein we simply state that the ability of the debtor to rehabilitate himself through a plan of organization now worked out will in no way be aided by the approximate sum of $140,000 which will remain after deducting expenses of equipment removal, income taxes, as shown by the letter of the Western States Life Insurance Company, received in evidence herein, through the inability of the debtor to secure the loan proposed to be made by said [71] company in the sum of $400,000, with said six-acre parcel, it appearing that said company's appraisers have placed a high value upon said parcel including the mineral rights in place; which facts were clearly established by the evidence upon said hearing, but which are disregarded entirely by said order.

And finally paragraph 11:

> "That no findings of any kind have been made upon the principal objections set forth in said written objections, your petitioners must therefore request that a transcript be prepared to include all matters received in evidence at said hearings, with the exception of the matters received by reference."

Well, the trustee was offering to supply the transcript but the Referee was unwilling for him to pay for it and the bankrupt, of the present bankrupt corporation, supplied the transcript.

Now, Your Honor will realize that what I have said there is either sustainable by what is in this transcript

or it is not. This is the transcript of all the testimony given in the case and it contains 242 pages.

Of interest are the last two lines appearing on page 242, lines 25 and 26:

> "This concludes all the testimony in the case. Argument that ensued left out by request of counsel." [72]

As such it does not include the statement made by the Referee after the taking of the evidence and shortly before he walked off the bench. He said:

"Gentlemen, I see a man out there," as I stated this morning, "who expects a commission."

There was no evidence whatsoever, of course, in the record to that effect and of course, the statement by the Referee could not, I believe, be considered as evidence in the case.

Now, Your Honor, without trying to go through this transcript and read to Your Honor the portions thereof that in my opinion sustain the objections set forth, I will state to Your Honor that I have in the last few days and nights, very carefully read the transcript. I think it took some four hours in the manner in which I read it. And in doing it I made notes as to certain pages and as to the testimony of certain individuals which I thought were of, not only extreme importance, but I thought they were practically controlling.

The portions to be read there are short in most places. They consist of only a few lines and I believe they should be read to Your Honor under my statement of just which one of these objections we are now presenting this evidence for consideration.

At the outset allow me to state to Your Honor that [73] as to the question of price, whether the price was fair, whether the price represented the fair market value or anything close to it, that it is usual in these cases where property of this caliber is involved and of this value, there are thoroughly competent experts on both sides and there were here. They were not only competent men but very distinguished and eminent men. The first expert called on behalf of the objectors was a man who stated that he had to give his testimony just that day because he was leaving for San Francisco. That was Mr. Harry C. Higgins.

He had been with the Southern Pacific Company for many, many years as their land appraiser—since 1922. He stated that he was now being transferred to San Francisco as the chief evaluation, chief engineer and land evaluation engineer of the Southern Pacific system.

Among other things he said since 1922:

> "I have appraised over $100,000,000 worth of properties including water front land in San Francisco, Oakland, Alameda, Portland, San Pedro, and Long Beach."

So we would assume at the outset there was nothing to the contrary; that almost anything that that man said as to value should be just about the value.

What Mr. Higgins said was that he had made an appraisal long before this matter arose for the bankrupt; that he made it on January 30th, 1946, and that the appraisal [74] was in the sum of $359,436.00.

Then he was asked if values had, in his opinion, increased after that and he replied—he was asked this question:

> "Has the Southern Pacific Company recently evaluated its own lands, Mr. Higgins?"

And he said:

> "Yes."

And he was asked:

> "At how much an acre?"
>
> "I put $60,000 per acre on the same land."

He stated that was about six months ago. He was asked if that included the minerals under the lands of the Southern Pacific Company and he said it did not.

He was asked the question whether the lands of the Newport Corporation were comparable lands and he said that they were.

Now, after that we proceeded to another expert whose qualifications I noted a moment ago are set forth over ten pages of this transcript. He was called on behalf of the objectors. He was a Mr. Johnson.

He testified as to being an appraiser for the Federal courts in this district, for the State courts, and for the State of California. For many banking institutions, [75] including the Security-First National Bank of Los Angeles. And as a matter of fact he says:

> "My first important employment in the appraisal profession in Los Angeles was for the Security-First National Bank of Los Angeles."

And he said that he appraised 25 to 28 bank buildings that they purchased from the First National in that merger.

Mr. Johnson enumerated many appraisals that he made for the United States Government of war plants at San Diego and airplane factories and matters of that kind and generally established himself as a man with tremendous experience in the appraisal business.

He was for many years the chief appraiser for the Title Guaranty & Trust Company of Los Angeles, now the Merchants Title Insurance Trust Company.

Mr. Johnson was also asked if he had made an appraisal of the six-acre parcel and he said he had. He said:

"It doesn't contain quite six acres—5.9906, I believe."

"What was your appraisal?

"A. $391,000."

That was an appraisal that he made in January 1946. He was asked if he made a re-appraisal and he said [76] he had. And:

"What is your present opinion as to the fair market value of the 6-acre parcel?

"A. $419,571."

Just glancing at page 48. Experts called. Don't know whether the bank called them or the trustee.

A. Mr. Mason was called. He set forth his qualifications as an appraiser of waterfront property for the State of California and various municipalities. He is outstanding. He put a very much lower appraisal on the property. I forget what it was but it was something very much closer to the price offered here.

So, Your Honor, there was that sharp conflict as to value and because of that I do not propose at this time to go into that matter any more than I have but rather proceed to what the objector thinks is the fundamental objection here, the primary objection, and that is what in the opinion of experts who should know, is the effect of the conditions attached by the proposed purchaser here that the mineral rights must pass at this time to the purchaser if the sale is confirmed, retaining only to the trustee the rights under the present lease.

Now, in that regard we called or we endeavored to produce Mr. A. A. Carrey, who for these many years has been on the payroll of the trustee under appointment of the Court. [77] Judge McCormick, as a technical adviser in reference to the gas and oil on this lease.

I might state, because I am sure it is beyond dispute, that his qualifications which finally were stated in here, were also outstanding; that he had a term of years, among other things, as chief geologist for the gas and oil producing company that is now the Texas Company. It had a different name at that time. He said he was chief geologist for that company and adviser to the City of Long Beach on its oil interests. He is a man of outstanding reputation.

Now, they couldn't get Mr. Carrey to testify—we couldn't get Mr. Carrey to testify when we needed him first so it was stipulated informally between the counsel for the trustee and myself, that Mr. Carrey would write a letter, as long as he was required to be in San Francisco, commenting upon the matter and that that letter would be received in evidence. The letter was written and the letter was placed in evidence and it appears in this trans-

cript at page 120-a, and I think that that letter should be, or pertinent parts, should be directed to Your Honor's special attention.

It is on the stationery of Mr. A. A. Carrey:

"Petroleum Geologist and Engineer,
"529 East Roosevelt Road,
"Long Beach, California."

The letter is dated November 17, 1947 and [78] addressed to:

"Mr. L. M. Cahill, Attorney at Law,
"606 South Hill Street,
"Los Angeles, California.

"Dear Mr. Cahill:

"The petition of H. F. Metcalf, Trustee, for the sale to the Proctor & Gamble Manufacturing Company of certain properties located within the Wilmington Oil Field has been brought to my attention. Said property is owned by the F. P. Newport Corporation and is at present leased and operated for oil by the Universal Consolidated Oil Company.

"I have been requested to study said petition and render any opinions that I might have in so far as said sale might affect the present and future economical operations of the wells now located on the property.

"I shall only attempt to base my opinion upon good oil field practice and the matter of operating leases. By way of qualification I might state that I have been actively interested in the oil business for 25 years, as a consulting petroleum geologist and engineer for 20 years, and more particularly I have been

the field agent for the trustee, Mr. H. F. Metcalf, in connection with [79] this particular property for approximately nine years.

"As a result of that experience I have had occasion to study the original lease many times and feel that I am familiar with the operations in so far as they affect this particular property.

"From a study of Paragraph B of the above mentioned fee, it appears to me that the sale of this property would change the present land owner's position in that the Newport Corporation would be the owner of a so-called 'over-riding royalty,' rather than as at present they are the owners of the mineral interest. Said sale would in a sense convert present oil and gas lease into a restrictive lease, in which case the termination period would be of prime importance. Such a restricted lease might preclude the possibility of the Newport Corporation operating the wells themselves sometime in the future.

"In explanation of the above statement, it will undoubtedly come to pass sometime in the future that the present operating company might feel that it is no longer profitable for them to operate under said lease. In such cases it has been found that the fee owner can often operate [80] such leases where an operating company, which has to pay high royalties cannot do so.

"It is my opinion that if this sale is made that the present land owner, the F. P. Newport Corporation, will suffer a decided loss in the sale value of their land owner's interest. It has been my experience that there are few buyers for overriding royalties,

as most royalty buyers prefer mineral interests. In each case where I have observed sales, it has been my experience that overriding royalties always bring considerably smaller prices than land owner's royalties or mineral deeds.

"I believe that the most serious effect that the sale would have upon the F. P. Newport Corporation is in the matter of the termination clause in the present lease. If such a sale is made the F. P. Newport Corporation has no power to prevent the present operating company from terminating said lease, and as a result of such action the F. P. Newport Corporation could in no way continue the oil operations.

"In answer to Paragraphs C and D, I do not believe that the changes in the physical equipment on the leases particularly work any hardships on an operating company. It may to [81] some extent limit their freedom in the matter of remodeling work and the handling of oils from the various wells, but I do not believe it will be serious enough to cause too great inconvenience.

"Hoping the above information will be of some assistance in clearing up some of the points in connection with said sale, I remain,

"Very truly yours,
"A. A. Carrey."

And that was received in evidence upon stipulation of counsel.

I will state to Your Honor that later Mr. Carrey did appear and did give testimony which also appears in this

transcript, wherein, as I read it the other night, it appeared to me to fully support everything he said in the letter.

An interesting thing developed during the course of his testimony. Previously a witness had been called, also a geologist and petroleum engineer of considerable standing, a Mr. Meade, and I asked the question which he was allowed not only to answer without objection, but as I recall he developed it at some degree:

> "What in your opinion would be the loss to the estate from the purchaser, or the viewpoint of what a purchaser of a royalty interest would pay [82] where he could get only the over-riding royalty rather than the royalty that came from the minerals in place,"

and Mr. Meade answered that in his opinion it would be 25 per cent.

I asked the same question of Mr. Carrey and there was an objection which was sustained by the Referee, on the ground that it was too speculative, although it was his opinion that was sought.

I then made an offer of proof wherein I offered to prove by this witness that on that point he would testify that the loss would be far in excess of the 25 per cent testified to by Mr. Meade. There was an objection made and sustained to the offer of proof.

Now, while we are on that point we might look at what Mr. Meade said in reference to that and that appears at —I have noted it here as being at page 89 of the transcript. I think, however, before reading it I might just glance at his qualifications a little bit.

At page 84 he recites that he lives in Glendale, is a consulting engineer and geologist, engaged for the past 26

or 27 years as such; honor graduate of the University of Arizona in Geology and Mining Engineering. That he practiced in practically every state in the West, particularly in California; that he is a member of the American Institute of Mining and Metallurgical Engineers, and of the American [83] Association of Petroleum Engineers.

> "I am a registered engineer in the State of California," and so forth.

He stated he was thoroughly familiar with the oil geology in California and particularly in the Los Angeles Basin and had made appraisals for estates and oil companies; for the George Getty Company and Eckert and Lloyd in the Ventura Oil Fields and so forth. Employed as a field examiner by the United States Land Office for a number of years. Employed by the United States Government on a case involving oil prices in the Kettleman Hills Oil Field. Employed by the State of California and:

> ". . . quite a percentage of my work consists of appraising properties for inheritance tax purposes, both for the royalty owner and the operator."

So much for his qualifications. There is more of it but proceeding to page 89, line 9. It would look like I should go back a little bit beyond where I am starting but it isn't necessary when you read back there.

> "That is correct. That is what I was endeavoring to state to the witness. I think you put it in better order. That the proposed sale does propose to convey all the mineral rights in the 6 acres, reserving, however, to the trustee such rights as he may have as the lessor under the present gas and oil lease [84] to the Universal Consolidated Company.

"Having those facts in mind, I will ask you if, in your opinion, such a proposed sale with such reservations is regarded as sound practice on the part of the land owner."

Then Mr. Lynch said:

"I object to the question on the ground it is not a subject for expert testimony. That is number one. Number two, it is wholly immaterial in this particular proceeding, there being no effort here to sell any oil royalty or rights under that lease. The only sale that is contemplated is the property, subject to that lease. And whether it is or not good practice is wholly immaterial in this proceeding."

Then the Referee said:

"I will let him answer. Maybe he can tell me something I have not heard before. When you say 'good practice' do you mean by that that is good business?

"Mr. Cahill: Yes, the things commonly done by the landowners.

"The Referee: I do not think that is permissible, because you have a bankruptcy proceeding which commonly means liquidation and not operation. The whole intent of bankruptcy is to liquidate and pay the creditors. But if you want him to tell me whether [85] that is the business practice, I will listen to your answer.

"Mr. Cahill: It will be so limited as to this question.

"A. As I understand the question and the explanation, answering the question, I would say it

would not be, because the oil interest would be jeopardized and the owner of the property, who now has the property, would not get the oil rights after the expiration of the present lease."

And Mr. Lynch said:

"We concede that."

Now, along the thought of giving Your Honor, or, having the thought of giving Your Honor a viewpoint of just what the trustee's position was then as not being too radically changed in this aspect, at least to some of the statements Mr. Metcalf made this morning on the witness stand, I would like to direct Your Honor's attention to the statement made by the attorney for the trustee during the course of the hearing in reference to just what their analysis disclosed would be the business effect, the legal and business effect of the proposed transaction. And that is a statement made by Mr. Lynch in reference to the loss of rights to drill into the lower sands—lower zones, which appears at page 155, line 12.

I thought it was a very fair statement and I still think it is fair and I think it is important. [86]

Yes, that one I do have to read back a little bit to get the sense of it. It is part of a statement made by myself and appearing at page 155, line 12:

"Also, before we proceed, I would like to make this statement in reference to what Mr. Lynch said at the last hearing. Not answering Mr. Lynch in any way, but just an observation.

"We called an expert, Mr. Meade, for the primary purpose to render expert opinion as to whether underlying these lands in question were one or two horizons that have not been produced from, the Ford Zone or

the 237 Zone, or both of them. The witness rendered his opinion regarding that point. He was asked by myself or someone else to state his reasons and he stated many reasons. I thought in passing, and only in passing, he made this statement to Mr. Lynch as taken from the viewpoint that does not concern the objectors here at all, he said if he had been the petroleum engineer on the well he would have recommended production tests on Well No. 6 and be produced. Now, whether Well No. 6 should be produced is no part of the case here. It is simply a statement that the witness made in passing in support of his opinion. As far as we are concerned it is not a point at issue whether Well No. 6 should have been [87] produced heretofore or not. It is not a matter in the case so we might avoid possibly putting too much time on that particular point.

"I understand that Mr. Follansbee is here and he might be very helpful in giving his opinion as to whether the Ford Zone or the 237 Zone or both of them have any possibilities."

I will pause for just a moment before reading Mr. Lynch's statement and state to your Honor the counter-expert called as to whether these lower horizons existed on this particular land, was an officer of the present lessee, Universal Consolidated Oil Company, and his name was Mr. Follansbee.

He expressed an opinion that as to the Ford Zone that it was not, in his opinion, at present; that it was there all right, but barren, or if not barren, that it could not be produced profitably, if I recall correctly. But I do recall on that point he said they had made no attempt to produce

the 237 Zone, so if he answered it at all on that he answered from outside matters.

Now, I approach what I started out to get before your Honor, Mr. Lynch's statement appearing at page 156, line 12:

> "I am in agreement with Mr. Cahill in one respect: the question of whether or not this particular well [88] should have been put on production on the deeper zone is not involved in this proceeding. However, one question is involved in this proceeding and that is whether or not there is any production to he had from that lower zone.
>
> "It was the information of the trustee and it was the information of his counsel that this particular well, No. 6, had been developed and drilled into that zone, and that production from that zone under this property was found to be not commercially profitable. Consequently we have felt that there has been an exploration of that zone and a determination that it is not a profitable venture. The trustee is not in any wise concerned in an effort to force this sale. If it is the conclusion of this Court that there may be a zone that can be profitably developed then I think, as I stated at the conclusion of the last hearing, that this sale should not be made because I think it should be made clear so that there will be no misunderstanding that if this sale goes through the right to develop any such zones, unless the Universal Consolidated Oil Company does it itself, is lost to this estate. In other words, if the Universal Consolidated Oil Company refuses to develop a zone which they think is unprofitable, or [89] for any other reason, this right to which counsel has referred of

> forfeiture is lost to the estate—that passes to the purchaser. We would not be able by reason of any such failure on the part of the Universal Consolidated Oil Company to forfeit the lease in that respect and drill any wells or cause them to be drilled."

Now, your Honor, in the light of that it might be interesting to note what the experts said as to the possibility of the existence of these two lower horizons, bearing in mind that from the uncontradicated testimony that from the horizons that have been produced the trustee has received from this six acres, just a few dollars short of a half million dollars.

Now, before proceeding to do that I should make this observation, that of the three experts, two called by the objectors and one called by the trustee or the Security Bank, there was some conflict. However, I don't think it was a very serious conflict.

Mr. Fallansbee, it is true an official of a producing oil company and the present lessee, did express an opinion as to the Ford Zone. It is predicted on the fact that his company had drilled into it; and while he admitted they found oil he qualified that by saying "Yes, there is oil there. We didn't think it would justify a production test and no production test was ever made on the well that [90] was drilled in the Ford Zone."

He admitted very frankly that the 237 Zone had not been discovered at that time on adjoining land and they didn't drill down there, so he knew nothing of that on these particular lands.

The witness Carrey and the witness Mead give very, very positive testimony and I think very valuable testimony, which should be carefully considered by this court

in reference to the existence of those two horizons, noting that they are being produced on adjacent and adjoining lands successfully.

Now, Mr. Mead's opinion appears in the transcript at page 141 at line 10. The witness was discussing the proximity to other wells.

The record discloses:

"Mr. Cahill: Let me clear that up.

"Q. At a distance as close as three or four hundred feet from the Newport property there are wells producing now from the Ford Zone?

"A. There are wells now producing from the Ford Zone, that is right on the west."

That isn't important so I will move over to page 44 at line 4:

"Q. You want the Court to understand, Mr. Mead, it is your position that the Ford Zone does underlie this [91] 6-acre parcel?

"A. Yes, that is definitely my opinion.

"Q. Also that there is a possibility that the 237 Zone underlies this particular parcel?

"A. Yes, the 327 Zone undoubtedly underlies the property. Whether or not it is productive is something I would not be able to say until after an electric log was run, but I have no reason to doubt but what it would be productive.

"Q. Are you of the opinion from information you have that the Ford Zone is productive there?

"A. Yes, I am definitely of the opinion that the Ford Zone is productive.

"Q. On these lands under the 6-acre parcel?

"A. The portion to the west of the fault—the fault crosses under this property and there would be a portion of this property in which you could not encounter the Ford Zone.

"Q. What portion is that, approximately, Mr. Mead?

"A. That would be the portion of Parcel No. 2, a part of that."

And he goes on with his description and so forth.

Now, on the same subject matter I will try to find the opinion of Mr. Carrey. It appears on page 198 at line 6. I might go back just a few lines to page 197 at line 23: [92]

"Mr. Cahill: Q. Assuming the Universal Consolidated Oil Company having before it the core log showing the possibility of productive sand between 5730 and 5750 feet, and then receiving an electric log and examining that log and concluded that it was doubtful that those sands would be productive—I am going to ask you to examine that log at that point and state whether in your opinion in any portion thereon which would indicate that it would not have been wise to run a production test?

"A. Well, my opinion is, and I felt at the time, and still feel, that there is there, was and still is some possibility of production. As I say, this is my opinion. If I had been on that well I believe, I am sure that I would have recommended that a solid string of pipe be run. I mean by that casing, and do certain under-framing between these points which showed some indication of oil or which place is between 5730 and -45.

"Q. Are there also other points in your opinion indicated which should have been tested?

"A. There are some points. The sands are not very thick, but I would have advised to run a solid string with proper type of cement job so that you could shoot the places for production. Not only [93] one place—you could try it first and then successively come on up and test these so that if the job was performed properly the various three or four or five places that indicate possibilities, some place may be only a foot, but the accumulation of all of them I think in my judgment would have possibly made some kind of an oil well."

Then elsewhere Mr. Carrey on the same subject matter, page 199, line 14:

"Q. In your opinion the only method that can at all approach the conclusive is the production test.

"A. That is the only way that is final and conclusive, to prove the capabilities or productive qualities of any sand."

Then he went on discussing the log further. Then he was asked on page 200 as to the existence of the 237 Zone, whether he had any knowledge concerning it. Page 200, line 9:

"Q. With reference to the 237 Zone, do you have any knowledge of that as to this particular area and these particular lots?

"A. That particular zone has not been tested in this six acres. The closest, I believe, is on the General Petroleum-Southern Pacific property.

"Q. How far away is that—that is, the well [94] that has the test on it?

"A. I would have to measure it on the map but I would say it is probably seven or eight hundred feet or maybe a thousand feet, without measuring it.

"Q. Is it productive there?

"A. Later they found some zone—

"Q. Do you have an opinion whether that zone might underlie the 6-acre parcel?

"A. I think the sands are there and I personally believe that there might be a chance. There is a fair chance of production. The location, however, on the 6-acre parcel is not as good structurally as the Southern Pacific property. It is lower and it is closer to the fault that intersects that property. I base my opinion that the 237 Zone is possibly saturated to some degree to the fact that the Ford Zone had some saturation. It is reasonable to believe if the Ford sands had some oil in them that the sands that abut the schist there in the 237 will also, and they might have more saturation because the 237 Zone is a great deal more productive zone than the Ford Zone.

"Q. In other portions of the field?

"A. In other portions of the field the 237 Zone is a little better because the sands are thicker. [95] There was more thickness of sands in the 237 Zone than the Ford Zone.

"Q. The 237 Zone has never been tested on the Newport property, has it?

"A. No. It didn't go quite deep enough in this well.

"Q. You maintain wells drilled into that property on the 6 acres might have valuable production?

"A. You can't say it wouldn't, because it is within the boundaries of production in the Lower Terminal with the Ranger on the other side of the field. There is some saturation in that Ford Zone. I don't think anyone can say no, that it is impossible.

"Mr. Cahill: No further questions of this witness."

Now, your Honor, I am not going to point out—I did make notes on it here, the contrary testimony of the witness Fallansbee as to the Ford Zone. His testimony had largely to do with why they didn't run a production test after they drilled into it.

The witness Fallansbee I regarded, and I think the referee did and everyone else did, to be a thoroughly honest witness. Personally I felt then and now that his qualifications were by no means the qualifications of Mr. Carrey to express an opinion as to these particular lands, although they were high in this sense, that he was an official of [96] the company at the time they put this well, No. 6, into the Ford Zone.

It appeared to me that, as to the possibility of valuable production from the two lower horizons, that the referee, confronted with the testimony of Messrs. Carrey and Mead should have held with the objectors that there was a possibility of not only a loss under this particular condition by the purchaser here to the trustee and to the bankrupt estate and oil from the present horizon, but the possibility of oil from two lower horizons.

Now, your Honor, I note that there was reliance made by the trustee on the fact that the referee on an earlier

hearing, which was instituted in December, 1945, in reference to this particular piece of property, where there had been an offer of purchase by another company, which offer was later withdrawn by them before we approached this stage, that the referee appointed an appraiser to appraise the property. That appraiser was a young man just back from the war by the name of Mr. Cunningham, an attorney, who is now a Superior Court judge, recently appointed by Governor Warren.

Mr. Cunningham rendered a written appraisal and as I recall the appraisal was about $212,000.

I refer to it here as to the time limit that was made and I notice that the transcript, at page 26, line 12, there is a reference to the time: [97]

> "Mr. Lynch: I think the actual appraisal was made in December, 1945. May it be understood that is part of the record?
>
> "The Referee: That will be admitted by reference, yes."

More than two years have gone by since that appraisal was made by Mr. Cunningham, and in those two years, as testified by Mr. Metcalf this morning, there have been four, up to the hearing, four price increases in the barrel of oil and there has been one since December 1, 1947.

The objectors, if your Honor please, have a feeling that that appraisal was rather remote under the changed circumstances and should not have been relied upon by the referee. Which brings me also to the matter of advertising, the objection having been raised by creditors other than those represented by myself, but as to which I joined in their objections and I believe so did the Bank of America, and I am just going to direct your Honor's at-

tention to the fact that the trustee, under my examination, established the time of the advertising—page 33, line 7. The trustee has just concluded testifying as to advertisements in papers in San Francisco, Seattle, Portland, Oregon, and—advertisements in the Portland Oregonian, San Francisco Chronicle, Seattle Post Intelligencer and various other papers, at the time when an offer had come in from an oil company in 1945—late [98] in the year. And then he was asked these questions, page 33, line 3:

"Q. Can you state what advertising you did at that time?

"A. The Portland Oregonian and the Chicago Tribune.

"Q. What dates, please?

"A. The first was January 11 to the 15th, 1945. No, that is January, 1946. Chicago Tribune, January 10-14; Long Beach Reporter five days, January 11, 15th, 18th, 22nd and 25th; and the Los Angeles Times, January 8th, 9th and 10th. The Los Angeles Examiner January 9th to the 13th, inclusive; and the Daily Shopping Guide, five days, in January, 1946. The aggregate cost of that was $640.80."

And that examination, by the way, was direct examination under his own counsel.

The cross examination on page 34 was as follows by Mr. Cahill—line 10:

"Q. These dates, you have read off of advertising in various newspapers were for what year?

"A. 1946.

"Q. All in 1946?

"A. Yes, they were practically in January.

"Q. Of that year? [99]

"A. Of that year.

"Q. What advertising and in what newspapers have you had, in 1947, in reference to the proposed sale?

"A. This proposed sale?

"Q. Yes.

"A. None in regard to this proposed sale. In the Long Beach Press-Telegram I advertised for about a week or ten days. And as a result of that I got some calls; and as a possible result of that I have two offers in my pocket now. I got them this morning, by the way, which may come before his Honor later.

"Q. When was that advertising done in the Long Beach paper?

"A. I guess six or eight months ago.

"Q. In the year 1947?

"A. That is right.

"Q. Is that advertising in the Long Beach paper you mentioned the only advertising that was done in reference to this property in 1947?

"A. It is all that I know of.

"Q. You say you did get some results from that advertising?

"A. I said so.

"Q. These offers you say you have in your pocket, [100] when were they received?

"A. This morning. I got them when I came to the office. I have been talking to Mr. Cahill for weeks. I had an offer here which he recently sent back and said, 'I'm unable to submit this offer, you must raise it.'"

I might pause there to say, your Honor, I am sure the words there "Mr. Cahill" are an error on the part of the reporter. I would supply the name there if I knew it, but I do not recall the right name.

The point made there, your Honor, was that whereas elsewhere Mr. Metcalf had testified on direct examination the advertising he did in January, 1946, which was then almost two years old and more than two years old now, he testified brought inquiries from brokers in New York, Chicago, Portland, Seattle and from companies such as Richfield Oil and named many, many companies. The thought was that if he got such excellent results in a period two years before that, apparently for a property of this kind to be disposed of, that there should have been substantial advertising in the great ports of the world or the great ports of the United States or the great manufacturing centers of the United States, bearing in mind that this is waterfront property and that large vessels can come in and do come in to this channel. [101]

Now, under the point that under the lease the lessors have the right to produce from the lower zones, I don't think that that was contradicted. I will state to your Honor the lease was put in evidence. The lease is a document that we spent many, many weeks—I think months in drawing, to get an instrument here that would give full protection to the trustee. It was drawn by the present counsel for the trustee, Messrs. Bailie, Turner and Lake, and we had the assistance of one of the outstanding oil attorneys of California, a member of that firm, Mr. Richard Turner.

Others, such as myself who had an interest in the matter, gave him all the help we could. As a result we then had and believe we have, an instrument here whereby

its terms in the event that Universal Consolidated Oil Company would abandon the lease—well, first, in the event they failed to produce all of the horizons we have a clause therein where the trustee may enter upon the land and produce himself. If they abandon the lease entirely, of course, the law would take care of that. We would simply enter and produce.

The clauses in there, the usual clauses that the lessee for any reason that he wants or no reason at all may quit claim all or any part of the premises at any time.

In the event he quit claims he agrees to get his property off of there within a reasonable time. [102]

I think we have adequate provisions there that we can take over the wells and casing and so forth and so on or he can quit claim a portion and hold certain wells, if I remember rightly.

Now, there were some of the clauses in there of such importance in my opinion, in a consideration of this question, that I call the fundamental question here that I had placed in the record while the whole lease was in evidence.

I read for the benefit of the referee into the record the paragraphs that I thought, of the lease, that should be carefully considered—the rights that we have, and they appear on page 125 of the transcript where, immediately after the admission I made this statement: page 125, line 13:

> "Mr. Cahill: I might call the attention of the Court to the fact that the lease contains 21 paragraphs and that there are one or two paragraphs which are extremely pertinent to the matter under discussion, one of which is Paragraph 13, composed of two sentences entitled 'Uses of Premises by Lessors.'

" 'The lessors and each of them shall have the right to gauge all production hereunder and to use the surface of the demised premises, (where they have the right now to use the same, respectively), for any purpose or purposes not [103] inconsistent with the rights of the Lessee hereunder, and to such an extent as will not unreasonably interfere with such rights of the Lessee hereunder, including the right to develop or to cause to be developed any sand or zone in the demised premises, the right to develop which has been lost by the Lessee. The Lessee agrees to conduct its operations hereunder so as to interfere as little with such use by the Lessors, respectively, as is consistent with the economical operation of the property for the development and production of oil, gas and other hydro carbon substances therefrom and thereon.'

We expressly reserved by that language, your Honor will note, we reserved two rights there. We reserved the right to use the surface where in using it we wouldn't interfere with the production of oil. We also reserved the right to produce from any horizon where the trustee, under the lease, had lost the right to produce.

Then Paragraph 13 was quoted and it is entitled: "Forfeiture" and is as follows:

"In the event of any breach of any of the convenants, terms, or conditions of this lease by the lessee, other than one of those mentioned in [104] Paragraph 29 hereof, and the failure of the lessee to commence in good faith to remedy the same within thirty days after written notice from the owner or owners of the demised premises so to do, or if the lessee shall fail to diligently prosecute its efforts until such de-

fault has been fully remedied, then, at the option of such owner or owners, this lease shall forthwith cease and determine, and all rights of the lessee herein and hereunder shall be at an end; provided, however, that notwithstanding any such forfeiture of this lease for any cause other than one of those mentioned in subparagraphs (a) and (b) of Paragraph 29 hereof the lessee shall have the right to retain any and all wells then being drilled or which may then be producing oil and/or gas in paying quantities, together with the aforesaid easements and appurtenances of said wells, in so far as reasonably necessary for the operation thereof, and sufficient land surrounding each well for the operation thereof. The land so retained shall be subject to all of the terms and conditions of this lease,"

And I said finally:

"I also wish to refer your Honor to the clause with reference to the surrender of the premises which is Paragraph 21, reading as follows: [105]

"Upon the expiration of this lease or its sooner termination in whole or in part, the lessee shall surrender the (163) possession of the demised premises or the affected portion thereof to the lessors, and shall deliver or cause to be delivered to the lessors a good and sufficient reconveyance thereof. Within thirty days after such expiration or termination, the lease shall, (subject to the rights and privileges granted the lessee and the lessors, respectively hereunder) remove from such premises as to which this lease is so terminated, all of its rigs, machinery and other property, and shall fill all sump holes and other excavations made by it.

"Right to quit claim.

"At any time after the lessee has drilled the first or any subsequent well upon said demised premises to the depth required by Paragraph 3 hereof, if such well or wells be incapable of production in paying quantities, the lessee may quit claim the demised premises, or the parcel thereof upon which such well may have been drilled to the lessors, and thereafter the obligations of the lessee hereunder shall cease as to the premises or parcel so quit claimed; provided further, however, [106] that the quit claiming of either of said parcels without the other shall have the same effect and be accompanied by the same results as if the same had been forfeited under Paragraph 15 hereof, but the quit claiming of the entire premises, whether accomplished by one or two deeds and whether accomplished at the same or different times, shall operate to deprive the lessee of all of its rights hereunder, except the right to remove its equipment as provided in Paragraph 14 hereof, subject to the rights of the owner or owners as in said last mentioned paragraph set forth."

I also set forth for the benefit of the referee, Paragraph 29, because it had been referred to, but actually what is in there was of no importance and it was only for the purpose of showing him the condition was no more important so he would know that without going through the entire lease.

Now, in reference to the price increases. We have just a little bit of expert testimony from the auditor at page 225, line 13. The question was asked at line 12, page 225:

"Q. And why is it higher?"

That is referring to the total oil income.

"A. There have been two price increases this [107] year.

"Q. And this is only from the 6-acre parcel?

"A. Yes, sir."

As a matter of fact the record discloses, as I have shown to your Honor, there had been a total of four price increases in a period, as I remember, of a little over a total of 12 months.

Now, there was a statement made by counsel this morning for the Security Bank. It was almost in the nature of argument and I am sure should have been considered as evidence, in reference to the debtor's plan of reorganization and as he saw it there was evidence presented to the referee that showed quite a different picture and the only evidence that I recall on that point—

The Court: Does this record show that the increase in price of oil now is as compared with the price of oil at the time the referee made this order of sale?

Mr. Cahill: I don't think it clearly shows that, your Honor, no. I still say—

The Court: We have heard evidence that there was an an increase in the price of oil at different times. Has there been any appreciable amount or any amount that would aggregate what I might say would be a substantial amount as compared with the oil sales. Will you look that up while we take a recess. We will recess for ten minutes. [108]

(Short recess.)

The Court: May I suggest to counsel, that I might be able to save you a good deal of time if you will call my attention to the various points you have in mind. Of course, I have to go through this record also. It may save time.

If all the attorneys involved here go through this transcript as you are we might be here for another week. I don't want to cut you off, but if you can call my attention in a brief way to what this witness or that witness testified to, it will probably save time, because in any event I am going to have to go through this transcript.

Mr. Cahill: I did not understand that or I would have shortened it.

The Court: You appreciate that if I don't do that and the other counsel proceed as you are we will be here for a week going over this transcript.

Mr. Cahill: Yes.

The Court: I have got to read this evidence. I have got to investigate this record made before the referee.

Mr. Cahill: That being true, I can terminate almost immediately, your Honor.

I would like, however, to answer your Honor's question as to the increase in the price of oil in dollars and cents. I direct your Honor's attention first to the fact that I asked Mr. Metcalf this morning whether the figures [109] that appeared on a statement which he had in the courtroom at the time of the hearing before the referee, showing it was prepared by his office, showing the price increases from April 1, 1946 through and including July 1, 1947, were true and correct, and he said if they were set forth thereon they were undoubtedly true. And then he was asked if there was a price increase subsequent to December 1, 1947 and he answered that there was but he didn't know the amount.

I have made inquiry since and apparently that increase was a 25-cent per barrel average increase.

However, during the recess I asked Mr. Newport to telephone Mr. Gribble, who is the auditor, and to get the figures as nearly correct as he could. I asked him to give us the figure in April of the price per barrel for our average gravity oil or approximate average and he has given us the figure for 20 gravity oil. I am informed we have some wells producing a gravity oil a little higher and a little lower. Our auditor figures that as of April, 1946, for that gravity oil, $1.06 per barrel. The price today is $2.19 per barrel or an increase of $1.13 per barrel. Something over 100 per cent.

The Court: All right.

Mr. Iverson: Do you know what it was for December 1, when we had the hearing before the referee?

Mr. Cahill: It would be approximately $2.19 less 25 [110] cents or $1.94.

I think there was some mention at that time that that was the figure but these are the figures for today.

So, that being the situation as indicated by your Honor, that you propose to read the transcript, I will state to your Honor that I have pointed out, I think, sufficient in the transcript to indicate to your Honor that my belief that our objections were proven should be sustained, including, I want to state, any reference that I have made to the trustee here, Mr. Metcalf. Particularly references that have been made to advertising and failure to do certain advertising and so forth. That carries no criticism in any manner directly or indirectly on my part or on the part of my clients to Mr. Metcalf. I think we have a very fine trustee. It is a matter within his discrimination whether he should advertise or not. We feel if there had been the extensive advertising for this sale as there was

two years before that with the 100 per cent increase in oil that something quite worth while might have happened. [111]

It is true, I might state also that I have no law to present to your Honor, but it is true there is a case—I think it is a Circuit Court decision—it is the often-cited Lake Champlain Pulp & Paper Corporation case where it says these sales should not be confirmed if there is evidence of insufficient advertising or where the public is not properly notified. That case is reported in 20 Fed. (2d) 425.

I will state also that as to the matter of the Referee without any evidence before him at all to justify it, of the trustee having actually employed a broker and ordered a broker's commission, and paying it without any evidence before him, the Referee, to justify it at all, without actually the Trustee ever having employed the broker, we have, if nothing else, a code section in this State, Section 1624 of our Civil Code which says that any agreement for the employment of a broker, the paying of commissions for the sale of real estate is invalid unless done in writing. There was nothing in writing and there was nothing submitted in writing.

The Court: It is your contention that the Referee is the one who secured the services of the broker?

Mr. Cahill: Yes, Your Honor. Your Honor might make a note of the code section. It is 1624 of the Civil Code. It is very positive. It uses those words "invalid for the payment of real estate brokers' commissions."

The Court: All right. [112]

Mr. Cahill: Thank you very much, Your Honor.

Mr. Lynch: Do you want to add anything, Mr. Nelson?

Mr. Nelson: (No response.)

Mr. Lynch: If the court please, on behalf of the trustee, I will be very brief indeed.

This court has already indicated that it intends to read this transcript and I assume will also read the findings of fact made by the Referee and examine the exhibits.

I just want to point out one thing. It is not my purpose and I think it would be inappropriate for me to discuss what weight the court is going to give to the changed circumstances and the testimony of the trustee regarding the changed circumstances.

The Court: But the trustee appears in court and seems to indicate that he wants another opportunity to settle this matter after the order has been made. Do you think it would be advisable to set aside this order of sale and give him another opportunity? He comes here and testifies to what his position is. By reason of changed conditions he says it would not be advisable to confirm this sale. Now, I am wondering what sort of situation the trustee is in before this court. It is an unusual thing. It is an unusual situation.

Mr. Lynch: It definitely is unusual. [113]

The Court: Yes.

Mr. Lynch: No question about that. The sale, the order confirming the sale by the Referee in my judgment and opinion, was proper under the facts and circumstances as then known and as they existed and the trustee in recommending that sale acted in entire good faith.

The Court: There is no doubt about that.

Mr. Lynch: He believed that that was the best offer that he could obtain. It certainly was the best offer that he had been able to obtain.

I might add at this point in reference to the advertising, that there was extensive advertising done in 1946, both in local papers and in eastern papers and in Oregon, Portland and Seattle.

It was the judgment of the trustee that further advertising would be useless so instead of putting in additional newspaper advertisements and spending money of the estate in that behalf, he notified many brokers of the fact that he still had this property for sale and it was re-offered and urged the sale of it and was anxious to sell it.

I think his testimony was that he notified some 500 brokers. But in any event the law does not require—there is no statute requiring any notice or any advertising. It is a question for the court to determine whether, under all of the circumstances, the trustee has used good judgment and [114] has done his very best to obtain for the estate the best offer.

Now, I think when the court examines this transcript he will be convinced that what the trustee did was all that could be expected under the circumstances—that he endeavored to the very best of his ability to find a purchaser for this property at a price that would be adequate and fair to all the parties concerned.

Now, there are circumstances that have arisen since that sale that, looking backward, make it appear that the sale was inadvisable.

Now, until this court makes its order finally confirming the sale of course it is open. And what weight the court is going to give to those facts and circumstances that have arisen since I don't think it is appropriate for me to discuss.

The Court: Are there any authorities dwelling upon the authority of this court in considering an order of sale of the Referee, where facts are received since the order of sale that it would be to the best interests of the creditors to order another sale.

Mr. Lynch: No.

The Court: Has this court the right to go outside of the record, or is this court bound by that record made before the Referee and none other? That is what I want to get your [115] idea about.

Mr. Lynch: It is my idea that this court is not bound by that record if circumstances have developed which would, in the judgment of the court, make it inadvisable because the matter is still pending until the final order. But it is incumbent upon the reviewing party to show error.

The Court: Well, is it error if the Referee did what he thought was proper with the record before him, but since he made the order is this court confined solely to the error or to facts developed which show the creditors could obtain more for the property now than at the time of the order of sale?

Mr. Lynch: No. In my judgment there are two things the court may consider. First, was there any error? The burden then is upon the reviewing party to establish that error. The record is complete. The court has the benefit of the transcript and I am satisfied after an examination of this transcript it will disclose there was no error.

Now, I further believe that if there are facts that convince this court that what has arisen between the time that the sale was ordered by the Referee and the present time, if the court is convinced that those facts disclose

that the estate will suffer by confirming the sale, that it has the right to set aside the sale. Whether or not the court has suffiicient facts, evidence on which to base such a conclusion [116] I am not prepared to say. But as far as the Trustee is concerned we will submit it on the record.

Just one additional point I intended to mention and that is this. As far as the commission to the broker is concerned I don't believe that a determination of fact, or if this court—I will put it this way: If this court should determine upon the record that the allowance of a commission was improper under the circumstances as disclosed by the record, that would not affect the sale. The only effect is the broker's right to the commission.

Mr. Iverson: If it please the court—

The Court: It is charged against the estate, isn't it? That commission is charged as an expense to the estate.

Mr. Lynch: But it doesn't affect the validity of the sale whether or not this court would have the discretion to disallow that particular item.

The Court: I see your point.

Mr. Iverson: If it please the court, this proceeding today really has come down to two main points. First of all, were there facts since the hearing on December 1st which would justify a different order being entered now than on December 1st? And second, is the record sufficient to justify the order having been made at that time?

Mr. Metcalf said that he had had a change of opinion this morning because of facts that had happened since [117] December 1st. His change of opinion was based on two main things as I summarize his testimony.

First, he said that he thought that he might be able to get an offer for the sale of this property, the surface and oil rights together, at a higher figure. And, second, there has been such an increase in the value of, or in the sale price of oil as to change his opinion as to what the value of the property was.

Well, we have just heard what the increase since December 1st was. As a matter of fact, at the hearing on December 1st the sale price of oil as of that time, was gone into and it was pointed out to the Referee that there had been increases in the sale price of oil up to that time.

There has only been a 25-cent a barrel increase since the December 1st hearing, which, of course, is only about ten per cent.

Now, as to the other figures and, by the way as pointed out this morning, this trustee in bankruptcy is still in position to receive those oil payments even if this sale is made. This is merely a sale of the surface rights to Procter & Gamble and we retain our rights under that oil lease—that is, the trustee does so. It will still retain and get those oil payments.

Now, as to the second point that the trustee made that he thought he could make a sale for a larger sum of money than [118] this, I might point out to this court, and you will find it in the record, that this property has been sold on two different occasions.

First of all, a sale was made to Procter & Gamble and then—I have forgotten the figure, but it was approximately $190,000. Then that sale was not confirmed and there was an attempted sale to the Los Angeles Soap Company, wasn't there?

Mr. Lynch: Never a return made on the original Procter & Gamble order. Before we made such a return

we got in a higher offer from the Los Angeles Soap Company and the return was made on that and that was withdrawn.

Mr. Iverson: Then the proposed sale to the Los Angeles Soap Company and that sale fell through. It was at approximately the same figure. And then Procter & Gamble came in and bid a lesser figure than the $198,000 that it eventually sold for and the trustee refused to submit the offer and eventually he told them if they would bid the price that it was confirmed that he would submit it and it was submitted and the bid was raised to that price and the bid was submitted and approved.

Now, as I pointed out to this court this morning, this matter has been before the Federal Court for over 13 years. It is reputed to be the longest bankruptcy case in any bankruptcy court in the United States. And as I stated [119] this morning every time we come to the point where we can liquidate the assets immediately comes up this statement that there is going to be someone who is going to buy it for more; we are going to refinance it and if the court will read the record you will see that there have been at least four or five refinancing schemes and at the time we had the hearing on December 1st they came in and tried to deter the Referee from approving the sale because they said that an insurance company was going to loan four or five hundred thousand dollars to them to refinance it. And they even had one real estate man come in and say that he had only heard about this property being up for sale the preceding day, and that if given 90 days he felt he could sell the property for $60,000 an acre, which would be $360,000, approximately. But those 90 days have run now since December 1st and where is their sale? They still don't have a definite offer. Nor

does Mr. Metcalf now have a definite offer from anyone for any price in excess of this figure. And if this sale is not approved at this time it means that we will go on again for years, probably, before we get any more liquidation, and if we have another sale of any substantial asset in this estate we will have exactly the same thing to go through as we have done for four or five times before, as the record shows.

And if this court will read the statement of the Referee on page 223 of this transcript, in his summary, he will note [120] that he says this:

"I have been hearing that so long—" this is about the sales and the refinancing—"that I would like to see something actually happen. I have been hearing refinancing ever since I got this case two years ago. We just need to sell some property. Quit sitting on your hands and get around and sell some. Isn't it true that anything in the world you have to sell is worth what you can get for it?"

That is the way the Referee expressed himself.

Now, it seems to me then we should come back to the point: Was the Referee on December 1st, justified in approving the sale?

Mr. Cahill has pointed out the opinions of some of the so-called experts produced as to the value of the property, but I wish to point out the one expert or the one man whom we called an expert, Mr. Tom Mason, who appraised the property at $196,350.

Now, on Page 104 of the transcript the Referee stated that in his opinion the man was fully qualified to appraise the property. And at one time he expressed his opinion that he was relying on the appraisal of Mr. Mason because he thought he knew more about it than anyone else who was brought before the court.

He appraised it at less than the sale price that [121] was actually obtained.

There has been quite a point made here that if this sale is completed it would be possible for Procter & Gamble to, you might call it, conspire with the Universal-Consolidated Oil Company to have them give up their lease and make a new lease under which the trustee interest in the oil would terminate.

There has been an offer of stipulation made on the part of Procter & Gamble which would obviate that and that situation, Your Honor, would only come about if there were such a conspiracy to deprive the bankrupt estate of its property rights. And if that situation arose it seems to me offhand, that this trustee would be able to go in and set aside any such termination of its rights in the property.

There has been quite a point made here, as there was at the hearing on December 1st, that there is oil below the present zones which hasn't yet been touched.

I refer this court to page 159, line 6 of the transcript, where Mr. Follansbee, the vice president of the Universal-Consolidated Oil Company stated that at great expense the Universal-Consolidated Oil Company had deepened their No. 6 well to the Ford zone. They found oil in sands there but not in what they considered to be producing oil, that would justify the production of oil from those sands.

He also stated on page 171, line 8 of the transcript, [122] that in his opinion there was no oil sufficient for production in the lower zone, the 237 zone.

Mr. McCraney: If Your Honor please, I would like to close with just a few remarks on behalf of the company that is attempting to complete this purchase.

As I stated this morning, the thing that we want is a piece of the surface property down there. We are not in the oil business and we are not interested in getting into it. We think that the price is fair. We have raised the price once at the request of the trustee. We believe that we have gone along as far as is necessary with any concessions that have been asked of us.

I think that the evidence taken at the hearing shows that the Referee is properly supported in what he did.

There is only the further question as to the effect of the trustee's change of heart in the face of circumstances that have taken place since that time.

I am not going to stand here and tell this court that it can't prevent the trustee from making an improvement sale and is limited simply to the evidence that was taken at the hearing. I think the court can always come in and keep a bankrupt estate from doing something to its detriment. But I think the court should consider a little bit just how much we have in the way of circumstances that have arisen since December 1st. [123]

There is a rise in the price of oil. There has been a certain amount of talk among the people that the trustee talked to about the possibility of selling this whole thing for a lot of money.

In view of the fact that the company will have to make substantial income tax payments there is a lot of question in my mind as to whether they will make a lot more money on this piece of property out of such a sale than they will make if they go ahead and take our offer and take our $198,000.

I think perhaps we should avoid being led into the error of assuming that merely because the trustee has become a little more cautious in the face of these circumstances

that there is necessarily something real that is going to happen here.

The most unfortunate thing that could happen would be for the court to refuse to confirm this sale on the basis of these rumors and speculations and then have it turn out that there was nothing really substantial to them; that the bankrupt estate could not make a sale and then we would be right back where we were before. From the point of view of my client we wouldn't have the piece of property, and from the point of view of the bankrupt they wouldn't have the money.

As I said this morning we are willing to go all the [124] way in entering into any kind of an agreement or stipulation within reason, to preserve the interests of the bankrupt estate.

I believe we have already disposed of the problem that was raised and perhaps seriously and perhaps not, that Procter & Gamble might slip through the back door and buy out the interests of the operating company. We are willing to make any agreement that will prevent that.

Now, the further objection that has been raised is the possibility that Universal and the operating company for some reason of its own, may quitclaim tomorrow, pull out all their equipment, quitclaim to Procter & Gamble and leave the trustee in bankruptcy without any of the oil royalties that he is now enjoying from that property.

The Court: Is it likely they will do so with the price of oil increasing?

Mr. McCraney: My reaction would be that Universal will probably be in there just as long as they can profitably get another drop of oil out of the property. That is speculation and I don't know about it, but we are still

willing to make any stipulation that we will protect as far as possible, the trustee in bankruptcy against that sort of thing happening.

Now, I think it would be appropriate since I am addressing counsel as well as the court in this matter, for me [125] to state the limits beyond which we probably would not go in agreeing to further conditions of sale.

We would not agree, I don't believe, that beyond 1963 when the lease terminates, that anyone else beside Procter & Gamble should have the oil rights. We think 15 years is long enough to work out anything. And that is one basic position we take. We don't want to give away oil rights beyond 1963.

Any method that was worked out would have to afford us some substantial access to the surface because after all that is what we are paying our $198,000 for.

Frankly we think that eventually Universal may quit drilling on part of this thing and we will get to use part of it. We won't pay $198,000 for a ball park and a parking area, which is all we are getting, if Universal actually goes ahead and operates under the lease for a full 15 years.

The Court: What are you buying under your bid?

Mr. McCraney: We are buying the entire property except that we can't use a substantial part of the surface until Universal stops drilling and we can't get the oil rights until after they are through.

The Court: You say a substantial part. What part of the property can you use?

Mr. McCraney: It is my understanding, and I am not too [126] well up on the facts, that most of the property cannot be used at the present time because of the equipment that is located on the property. But the trustee,

under the terms of this sale, is going to clear away enough of the surface that we can use it to put in parking lot, which I can understand is necessary, and they want a baseball field which would seem to be secondary and our use will generally be limited to that for the time being. Is that correct, Mr. Lynch?

Mr. Lynch: That is correct.

Mr. McCraney: We are paying quite a lot of money for something we may not get the beneficial use of for a long time. We are willing to do this and it may not work, but I think it will obviate the objection that has been made that the trustee might lose everything if Universal gave up tomorrow. We are willing to agree that as to any portions of the property that Universal quitclaim, whether it is the entire property or simply a portion of it, that if the trustee can work out some method of sub-surface drilling that we will agree that they may retain the oil rights fifty feet below the surface for the full period until 1963. In other words, if they can drill by slant drilling they can keep on getting these royalties or operations of their own until 1963.

Now, maybe the objector will come up with the [127] objection that slant drilling isn't practical. I don't know. Maybe it wouldn't work there but that is one step further toward obviating this objection that may be the trustee will lose everything if Universal gives up.

The Court: I was wondering what you are going to use this property for under your bid.

Mr. McCraney: Eventually we are going to use it for storage facilities, warehouses, dock space and other operations in connection with the rather large manufacturing plant that we have right near there at the present time and we are willing to gamble that sometime during the

course of the next 15 years part of that surface will become available to us.

We are willing to gamble further that if Universal drills there and keeps right on for 15 years that after 15 years we will get the use of the property. So, I think in the light of those facts our bid of $198,000 doesn't sound quite as low as it does when people talk about our getting all this oil and everything else during that time.

Now, I can only say that, if the court feels that this is an improvident sale, we are willing to entertain any reasonable modification of the order that will protect the rights of the trustee in bankruptcy up to the point where it actually means that we don't get any assurance of the beneficial use of the property for 15 years and in that case we simply couldn't accede to it. But our attitude is still one of cooperation in an attempt to make the sale go through rather [128] than be attempting to stand on any technical position that we might be able to take here.

The Court: Is there anything further?

Mr. Cahill: I might just make this one observation, if your Honor please. This is a court of bankruptcy and therefore the United States Supreme Court has said, comparatively recently—several times recently, first, in a case called Local Loan Company vs. Hunt, somewhere around 309 U. S., that all proceedings herein are proceedings in equity. All decrees in the United States Supreme Court are decrees in equity and as such I reason when a trustee in bankruptcy appears before this court as a court of equity, and in a proceeding in equity, and states that he did as he did this morning—that is, if he had the knowledge now, not only in reference to higher prices, not only in reference to an increase in the price of oil, but if he had the knowledge that he says that he has now, that royalty buyers will not pay the same price

or anywhere near the same price for royalties where they are divorced from the ownership of the oil itself, as would happen if this sale is confirmed, that he would not have recommended to this court this proposed sale because of the conditions.

Now, what is the significance of that, your Honor? The significance is this. The trustee comes here under oath, confesses that he made a mistake. He made a mistake [129] because of the lack of knowledge which he now has, particularly on this last point I mentioned. And as such he asks this court, as we do, not to confirm an order which he fears, as he has expressly stated, will tend to greatly injure this estate and the creditors thereof.

Mr. Nelson and myself represent well over 70 per cent of the creditors.

The bankrupt, whose only hope can be either a sale such as suggested by Mr. Metcalf, who says now that for the first time there is such a sale available—we might call it a master sale, a gross sale of both land and oil.

The bankrupt appears also and objects.

Your Honor has been addressed several times on the fact that any fear of conspiracy is averted by the offer which the purchaser now is pleased to make as an amendment to his offer. But, as I pointed out before and I must point out again, if that could eliminate the termination of this lease by the lessee, all right; but it cannot in the history of the Los Angeles Basin.

One of the experts testified concerning—I think it was Mr. Carrey, that over and over again the original producer, usually a major oil company, found because of the 35 per cent royalty or the 40 per cent royalty and so on down, that there is as high as 80 per cent of them that could no longer profitably produce the lease and they

quitclaimed and [130] the landowner goes right in and he produces successfully either through himself, or he leases it to a smaller company for a lower royalty or something of that kind. This estate has a very, very valuable right in minerals now in place which we are asked by this particular offer to jeopardize and the proposed purchaser, unfortunately—and it is clear we have the good will of the proposed purchaser, but unfortunately he has no power to prevent that thing happening.

There might be a gross error of judgment on the part of the oil company that might arise from 101 sources, but whatever source it arises from this estate is going to be seriously, as the trustee told your Honor this morning, injured. So, for those considerations and because of those reasons we feel the sale should be rejected in its entirety. We feel the court has that power and certainly after the trustee comes in here and takes the stand and says he made a mistake. I asked him the direct question and he said if he knew then what he knows now he would not have recommended the sale. Then I said,

> "Mr. Metcalf, do you recommend to this court now that the sale be not confirmed?"

And he said:

> "I certainly do."

Under those circumstances we think, if your Honor [131] please, this matter should go back to the trustee. He is at all times under the jurisdiction of this court. I am speaking of the trustee. He is subject to be hauled into court for examination at any time by any of the parties.

If the trustee is successful in accomplishing what he has in mind, the gross sale of land and oil it will be of benefit to everyone. If he doesn't the property then should be offered for sale, readvertised, re-appraised, and a sale should then be held on that basis. It would be held, certainly, on a much more favorable market than the market that was available in December, 1945, which was the identical amount almost to the penny which was never confirmed and never got to the confirmation point simply because the purchaser elected to withdraw and walked into court and said that he withdrew his offer, because of their discovery that the cost of the removal of some equipment—As I recall they were going to pay for the cost of the removal of the equipment and after it was removed it wouldn't have given them all the free land that they wanted.

So that is my request of your Honor. I thank you very kindly for your very close attention.

Mr. Lynch: If the court please, I have just one observation to make. There has been the suggestion or intimation that the trustee made a mistake because he didn't understand the implication or effect of this sale. I will very briefly [132] call the court's attention to the record at page 91:

> "Mr. Lynch: When the lease terminates for any reason—by virtue of time or failure to produce in commercial quantities—and under those circumstances it is quitclaimed back by Universal-Consolidated Oil, the rights of the trustee in this estate cease. There is no dispute on that.

"By Mr. Cahill:

"Q. That is the fact. That being the fact, what, in your opinion, is the danger of the trustee in bankruptcy in selling this asset in this manner?

"A. He would lose the protection that would run to the landowner in the event the lease was terminated.

"Mr. Lynch: There is no question about that.

"The Witness: Therefore, the value would be lower.

"By Mr. Cahill:

"Q. Because of that factor is it true that those who would purchase, and that a sale not having been made—the proposed sale—the interest in the oil from the trustee, will they pay, in your opinion, a lesser figure if the sale is consummated on that basis?

"Mr. Lynch: No sale involved. What we get for [133] the oil is fixed by the terms of the lease. We get a certain percentage. The lease provides that will be sold at market. The question of whether we sell this property does not affect the price we get for the oil."

Then again on page 94:

"By Mr. Lynch:

"Q. What you mean is if this sale goes through this estate's royalty interest would be less valuable because it carried only with it the right to produce under this particular lease?

"A. That is exactly what I mean.

"Q. In other words, if the sale is made and the rights of any future development are taken away, then this protection under this particular lease has

less value than it would if it carried with it future production?

"A. That is true, anyone that bought this royalty today before the sale would have no rights to any future development.

"Q. He would have only rights under this lease, and without that lease he would have no right in any other lease on the land?

"A. That is correct.

"Mr. Lynch: That is something that has been [134] conceded all along."

In other words, there was no misapprehension or misunderstanding as to the effect of this sale.

Mr. Cahill: May it be stipulated that was not the testimony of Mr. Metcalf, but the testimony of Mr. Roy G. Mead?

Mr. Lynch: That is right.

Mr. Cahill: Thank you.

Mr. Lynch: But Mr. Metcalf was in court at the time and I was his counsel and there wasn't any misunderstanding.

The Court: We have a situation here where the bankruptcy proceeding was instituted in 1935 and it has been pending in this court since then.

During all those years the parties in interest, the creditors, the trustee and the Referee have been given an opportunity to bring this case to a close. In other words, you are creating an atmosphere of speculation by continually asking for further time during which you might acquire a better bid or more money for the property. It is doubtful whether there would ever be an end to that kind of proceeding in a bankruptcy court or in

any other court, if we are to sit here and entertain an atmosphere of speculation on the sale of property and hold creditors up as we are doing here.

I haven't made up my mind as to whether this sale [135] should be confirmed or set aside yet from this record that is before the Referee and also from this additional testimony of the trustee who now comes in and says if the court will give him another chance he feels somewhat persuaded that he can receive more money for this property in the interest of the creditors.

They are the ones that he is representing primarily. They are the ones that the Bankruptcy Court is representing primarily. First, it is the creditors of the bankrupt and then if there is anything left, of course, it goes to the bankrupt. But he is a secondary consideration. When he comes into a bankruptcy court his creditors have to be taken care of first.

The thought has occurred to me that if the court would hold up passing on this order of sale until a certain time and if between now and that time the trustee can receive an offer of purchase for this property in any amount in excess of or a substantial amount then the court can consider that in addition to the record that is before the Referee.

I am not saying that the record before the Referee isn't a correct one, but we can consider them both by giving them an additional chance, which they are appealing here for on the basis that the increase in the price of oil will make a better sale possible. [136]

I shall not permit this case to run on indefinitely. That must be done in a specified time or this thing will be brought to a final close.

The thought occurs to me whether I should, since the trustee has come here and asked that this sale be

set aside by reason of subsequent developments by which the chances are the estate will acquire more out of it for the benefit of the creditors, whether I should give him time to do that—see if that can be worked out and then pass finally upon this bid. I am wondering whether I should hold this in abeyance. If I do that would certainly give the trustee and the creditors and the objectors their opportunity to get more out of this property than what they are getting out of it under this bid. But for me to set aside this order of sale and send this back and leave it open to the trustee I don't feel I would be justified in doing until this contingency which has been presented here by the trustee under oath, of his feeling that he can get more for this property by reason of the subsequent developments is given a chance. In other words, we want to get all we can out of this property for these creditors.

Now, the bank comes in here and says by reason of this sale they will cut their claim down to $150,000. How about these other creditors? Maybe they are not able to do that. They are interested in this just the same as the [137] bank who says they are willing to take a reduction of $150,000 if I confirm this sale. How about these other creditors? They have rights, too. They are all equal.

The thought occurred to me that it might be equitable and just to give this trustee—just hold this in abeyance, my ruling on this order of sale, until a certain time, and if he can receive bids or make any report to the court of any amount greater than what he now has, under all the circumstances, the court can then pass on whether to set aside the sale or confirm the order of the Referee.

The trustee seems to feel he can get $500,000 or $700,000 more for this property over and above the $198,000, from which you have got to deduct about $20,000 for expenses and other items which brings it down to about $140,000 as all the estate will get out of this $198,000 bid. That is what this record discloses.

Now, it is a question of whether this court shouldn't, comparing that $140,000 which they will get out of it, against the opportunity which the trustee says he feels will provide an amount somewhere between five and seven hundred thousand dollars—whether the court shouldn't give him that opportunity within a reasonable time or not. That is what confronts me mathematically in this case.

There isn't any dispute on the record. That is the mathematics of it. But he wants the chance. [138]

If this is true, as the trustee feels, he can receive a bid for this property in a reasonably short time. I think that time should be limited and following that the court can pass on the matter.

That is the thought that is running through my mind if I am going to treat these creditors equitably and protect their rights under the law. Suppose I postpone the final determination of the objections to this sale of the Referee until about the 25th of April and then we will have the whole thing before me and I can dispose of it finally.

If the trustee has any confidence in his ability to secure a bid he can certainly get it between now and the 25th of April and make a report to this court.

I am going to read this record between now and then, even though I have a pretty good idea of what it is already. Following that we can then dispose of the matter.

I will postpone the passing on these objections to the sale until the 25th of April, and the trustee may have authority to see if he can get further bids on this property and the conditions surrounding them. Following that I shall determine whether to confirm or set aside this order.

Mr. Lynch: May that be returnable before this court on the 25th of April with the usual deposit of ten per cent of the bid?

The Court: Yes, certainly. [139]

Now, as to the commission allowed the broker. I want you to look up the law on that. I have an idea about what the law is with reference to the $5,000. I want you to look up on the law and advise me whether a Referee can call in a broker and give him $5,000 commission. I shall have to pass on that separately when the time comes, whether that is a legal charge. I may either refuse to confirm that or allow it. I don't know at this time. There is a legal question presented there as to whether or not that was regularly received and was a legal charge against this estate—that is the manner in which it was ordered to be paid.

I think this is the proper way for me to handle this case, gentlemen, considering the shape it is in. That will give you all an opportunity between now and the

25th of April to dispose of the matter one way or the other.

It is the order of the court that this case will be postponed until April 26th, 1948, at 10:00 o'clock a.m. Counsel for the trustee will prepare a written order postponing this until then.

Mr. Lynch: Very well, your Honor.

(Whereupon, at 4:30 o'clock p.m., the above entitled matter was concluded.)

[Endorsed]: Filed Jun. 11, 1948. Edmund L. Smith, Clerk. [140]

[Endorsed]: No. 11962. United States Circuit Court of Appeals for the Ninth Circuit. Proctor & Gamble Manufacturing Co., Appellant, vs. H. F. Metcalf, Trustee in Bankruptcy of the Estate of F. P. Newport Corporation, Ltd., Bankrupt, Dorothy Day, Martha McMillen, Matilda Olsen, William H. Neblett, Mrs. F. P. Newport, Eugene P. Clark, F. P. Newport Corporation, Ltd., Ruby E. Neblett, Security-First National Bank of Los Angeles and Joseph Sattler, Appellees. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed July 1, 1948.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit

United States Circuit Court of Appeals
for the Ninth Circuit

Case No. 11962

PROCTER & GAMBLE MANUFACTURING CO.

vs.

H. F. METCALF, et al.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

Appellant, Procter & Gamble Manufacturing Co., hereby designates the following as the points on which it intends to rely on appeal to the Circuit Court of Appeals for the Ninth Circuit pursuant to its notice of appeal filed on May 25, 1948.

1. The District Court erred in rendering or entering the Order or Orders appealed from.

2. The Order or Orders appealed from are not supported by adequate, or any, findings.

3. In so far as findings were made by the reviewing court, such findings are not supported by and are contrary to the evidence and are clearly erroneous.

4. The reviewing court disregarded the rule that the findings of a Referee in Bankruptcy are presumptively correct.

5. It was an abuse of discretion for the reviewing court to deny a continuance on March 11, 1948.

O'MELVENY & MYERS
PIERCE WORKS
RICHARD C. BERGEN
HOWARD J. DEARDS
By Howard J. Deards

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jul. 16, 1948. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause]

PETITION FOR ORDER RE EXHIBITS AND ORDER

Petitioner, Procter & Gamble Manufacturing Co., represents to the above-entitled Court:

1. On or about June 28, 1948, the District Court of the United States, Southern District of California, Central Division, made a certain Order pursuant to which the Clerk of said Court forwarded to the above-entitled Court certain original exhibits, in lieu of copies thereof, as part of the record on the appeal of Petitioner to the above-entitled Court.

2. Said exhibits are a necessary part of the record on appeal but should be considered by the Court in their original form and should not be required to be printed as a part of the printed record on appeal by reason of the following:

(a) The printing of said exhibits would unreasonably and unnecessarily increase the expense of said appeal, which expense should be kept at a minimum because said appeal is from an order in a bankruptcy matter.

(b) Said exhibits in their original form may be referred to by the Court as readily and more usefully than could printed copies thereof.

Wherefore, Petitioner Prays that the above-entitled Court make its Order that said original exhibits be not

printed as part of the printed record on appeal, but be considered by the Court in their original form.

Dated this 15th day of July, 1948.

O'MELVENY & MYERS
PIERCE WORKS
RICHARD C. BERGEN
HOWARD J. DEARDS
By Howard J. Deards

ORDER

Good cause appearing therefor from the foregoing Petition of Procter & Gamble Manufacturing Co.:

It Is Hereby Ordered that the original exhibits constituting a portion of the record certified by the Clerk of the District Court on the appeal of Procter & Gamble Manufacturing Co., be not printed as a portion of the printed record on appeal, but be considered by this Court on said appeal in their original form.

Dated this 16th day of July, 1948.

FRANCIS A. GARRECHT
Circuit Judge

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jul. 16, 1948. Paul P. O'Brien, Clerk.